

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re: )  
)  
KEITH JONSSON, an individual; )  
MICHAEL JONSSON, an individual;) )  
CEDAR VALLEY FUR FARM, LLC, )  
a Utah limited liability )  
company, )  
)  
)  
Plaintiffs, )  
)  
v. ) Case No. 2:11-CV-140BSJ  
)  
NATIONAL FEEDS, INC., an Ohio )  
corporation; and RANGEN, INC., )  
an Idaho corporation, )  
)  
Defendants. )

Transcript of Jury Trial

BEFORE THE HONORABLE BRUCE S. JENKINS

January 14, 2014

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Salt Lake City, Utah 84101  
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1           Salt Lake City, Utah, Tuesday, January 14, 2014

2                               \*   \*   \*

3                   THE COURT:   Good morning.   And why don't we  
4   turn to Jonsson and others v. National Feeds and others.  
5   It looks like counsel are present.   And tell me how  
6   we're doing on exhibits.

7                   MR. HANCEY:   Your Honor, we spent some time  
8   last night agreeing on what exhibits we could pull out  
9   of the exhibit book.   We came in this morning and we  
10   pulled those out of all of the exhibit books and are  
11   hoping now that what's left there are documents and  
12   pages that we're actually going to be asking questions  
13   about, so I think it reduced the overall length by more  
14   than half.

15                  THE COURT:   Uh-huh (affirmative).   Okay.  
16   And in reference to exhibits, I think it would make  
17   sense if we made a record as to the numbers of your  
18   common exhibits.   We had a Stipulated Pretrial Order,  
19   you may recall, and counsel reserved objections as to  
20   all of the exhibits, those stipulating as to  
21   authenticity, and then you switched signals contrary to  
22   the Pretrial Order, if I remember correctly.   So I think  
23   it would make sense if we took a few moments, if you're  
24   able at this point, calling your attention to page 18 of  
25   the Pretrial Order, are the common exhibits 1 through 9

1 to be received?

2 MR. HANCEY: Your Honor, those have been  
3 modified. We have taken some of those out, and I can go  
4 through that with you if the court wants or --

5 THE COURT: No. We can make a record down  
6 the road, but somebody's going to have to make a record  
7 sometime as to what indeed is received.

8 MR. HANCEY: Okay.

9 MR. MINNOCK: 1 through 9, the revised  
10 version that's in your book, 1 through 9 may be  
11 received.

12 MR. HANCEY: Yes, true, as in the new book;  
13 is that correct?

14 MR. MINNOCK: Right. These are pared  
15 down -- what's in your book now has been pared down, but  
16 what's in there are portions of what's in the Pretrial  
17 Order.

18 THE COURT: I understand that, looking at  
19 the Pretrial Order, you talk about 26 through 35, for  
20 example, are we dealing with 26 through 35?

21 MR. HANCEY: No, Your Honor. Some of those  
22 pages have now been removed, but, yes. And then some of  
23 the exhibits, for example, Exhibit Number 4 has been  
24 removed in it's entirety.

25 MR. MINNOCK: 5.

1 MR. HANCEY: Sorry, Exhibit 5.

2 THE COURT: Okay. And then on plaintiff's  
3 exhibits you've got similar problems.

4 MR. HANCEY: Yes, Your Honor. And on those,  
5 several of them have been removed completely. Others  
6 have been reduced by a number of pages.

7 THE COURT: Then on defendants' proposed  
8 exhibits the same thing.

9 MR. HANCEY: Same thing, correct.

10 THE COURT: Okay. And would you be in a  
11 position say this afternoon to walk through what it is  
12 that people are offering and agreed upon?

13 MR. HANCEY: Yes, Your Honor.

14 THE COURT: So that we can make a record as  
15 to what indeed has come in.

16 MR. MINNOCK: I think we can do that now. I  
17 think that there are only a small subset that still have  
18 problems that -- and those problems will likely be  
19 resolved through the testimony of a couple of witnesses  
20 this morning.

21 THE COURT: Are we in a position to identify  
22 specifically what we're talking about?

23 MR. MINNOCK: Yes. I can walk through these  
24 with you. Okay. 1 through 9 in your new book --

25 THE COURT: 4 is omitted. I thought 4 was

1 omitted.

2 MR. MINNOCK: 4 is not omitted. 5 is  
3 omitted.

4 THE COURT: 5 is omitted?

5 MR. MINNOCK: 5 is omitted.

6 THE COURT: So it's 1 through 4 and then 6  
7 through 9?

8 MR. MINNOCK: Yes, those may be admitted.

9 As I understand it, 10 can be admitted. 10 may be  
10 admitted, 11 may be admitted, 12 may be admitted.

11 THE COURT: Okay. And how are they going to  
12 help us?

13 MR. MINNOCK: Well, these are exhibits from  
14 the plaintiffs standpoint, so I'll let them maybe  
15 address what they're for. And 13 may be. So 10 through  
16 13 may all be admitted. We don't have an objection to  
17 them.

18 THE COURT: Okay. Well, maybe plaintiffs  
19 can tell me how 10 through 13 are going to help us.

20 MR. HANCEY: Yes, Your Honor. Exhibit  
21 Number 10 is the contract between the two defendants  
22 that sets out the terms and the representations that  
23 were made by those parties. I'm going to be asking  
24 National Feeds' president, Ed Buschur, about that  
25 contract.



1           Exhibit Number 11 is a one-page document  
2   that shows the ingredients that make up the crumlets.  
3   I'm only reserving this, depending on how Mr. Buschur  
4   answers a question. I want to establish that fish meal  
5   was an ingredient in that product.

6           THE COURT: What about 12?

7           MR. HANCEY: 12 consists, Your Honor --

8           MR. MINNOCK: I'll stipulate that fish meal  
9   is an ingredient in that product.

10          MR. HANCEY: Right. I mean it's no big  
11   secret.

12          Exhibit 12, Your Honor, are the marketing  
13   materials, advertising materials, that National used to  
14   promote the crumlet product which contains some of the  
15   express warranties concerning it.

16          THE COURT: And 13?

17          MR. HANCEY: And 13 is a one-page document,  
18   it's an invoice document from Rangen to National Feeds  
19   that shows not only that they were working with National  
20   but also that they knew that Keith Jonsson was going to  
21   be the ultimate enduser of the product.

22          THE COURT: How about 14?

23          MR. MINNOCK: 14 is going to be the first of  
24   the ones that we're going to need some attention from  
25   the court on.

1 THE COURT: Say that again.

2 MR. MINNOCK: 14 is objected to is what I'm  
3 telling you.

4 THE COURT: That's a new objection?

5 MR. MINNOCK: No. It's noted in the  
6 Pretrial Order.

7 THE COURT: Okay.

8 MR. MINNOCK: Well, that's your opposition  
9 on 14, so I don't want to speak to that.

10 15 may be admitted.

11 THE COURT: Now, there's something in there  
12 that relates to insurance that somebody was --

13 MR. MINNOCK: That portion has been removed.

14 THE COURT: What?

15 MR. MINNOCK: In your new book it's a  
16 one-page exhibit. All of the objectionable material has  
17 been removed.

18 THE COURT: Well, let's identify the  
19 particular exhibits. We can call them 15A or 15B, but  
20 we need to identify them on an item-specific basis.  
21 That's one thing people need to understand.

22 MR. MINNOCK: 15 is now a one-page exhibit.  
23 Everything else has been removed.

24 THE COURT: Which does it refer to?

25 MR. MINNOCK: It is PL000006. It's the

1 letter from Keith and Michael Jonsson to National Feeds,  
2 dated November 5th, 2010.

3 THE COURT: Give me your Bates number again.

4 MR. MINNOCK: PL000006, one-page letter.

5 THE COURT: Is that in item 15?

6 MR. MINNOCK: It is in item 15. If you'll  
7 look -- your book that we --

8 THE COURT: I'm looking at the Pretrial  
9 Order.

10 MR. MINNOCK: I understand that, but the  
11 letter that we're talking about is actually in your  
12 book. We've culled the --

13 THE COURT: Where is it listed on item 15 in  
14 the Pretrial Order?

15 MR. MINNOCK: That's just listed as a set of  
16 documents, so there was only one --

17 THE COURT: So it has a different  
18 identifying number.

19 MR. HANCEY: Well, Your Honor, if you look  
20 at the Pretrial Order at the bottom of page 19 the first  
21 item in that big long parenthetical there is a range of  
22 pages from PL3 to 7, so this document would fall within  
23 that range.

24 THE COURT: So we've got one item --

25 MR. MINNOCK: Right.

1 THE COURT: 15, it's a letter.

2 MR. MINNOCK: Right.

3 THE COURT: And people have agreed upon  
4 that.

5 MR. MINNOCK: Yes.

6 MR. HANCEY: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. MINNOCK: 16, 17, 18, and 19 are all  
9 test results of the feed, and there's some questions  
10 about the sampling procedures between the defendants and  
11 the plaintiffs, so those exhibits have not been  
12 stipulated to, pending some examination of the  
13 witnesses.

14 THE COURT: Okay.

15 MR. MINNOCK: 20 was removed.

16 THE COURT: I'm sorry, 20?

17 MR. MINNOCK: 20 was removed.

18 THE COURT: Okay.

19 MR. MINNOCK: 21, I guess 21 will remain?

20 MR. HANCEY: Well, 21 is identified as a  
21 plaintiffs exhibit, but we have no intention of using  
22 it. The defendants wanted that to remain.

23 MR. MINNOCK: Okay. So it can be stipulated  
24 to its admission.

25 MR. HANCEY: Yes.

1 MR. MINNOCK: So 21 can come in, it's a  
2 one-page document.

3 THE COURT: Okay.

4 MR. MINNOCK: 22 and 23 are simply documents  
5 from these testing companies. These are not stipulated  
6 to and they -- again, these go back to those tests that  
7 I mentioned, and so they may or may not be needed  
8 depending on the testimony of some of the witnesses this  
9 morning.

10 THE COURT: 22 and 23.

11 MR. MINNOCK: Yes.

12 THE COURT: Okay.

13 MR. MINNOCK: 24, 25, 26, 27, 28, 29, 30  
14 were all withdrawn. 31 was withdrawn -- oh, wait, no.  
15 31 was kept and may be admitted, right?

16 MR. HANCEY: Yes.

17 MR. MINNOCK: 31 may be admitted.

18 THE COURT: Okay. How is that going to help  
19 us?

20 MR. MINNOCK: That shows the vaccine  
21 purchases over the various years, and by looking at the  
22 vaccine purchases it gives you some indication of how  
23 many kits you have because that's who you're  
24 vaccinating. So it's more of an issue -- it's probative  
25 as to the amount of kits on the farm.

1                   32 has already been introduced to the jury  
2 and may be admitted.

3                   MR. HANCEY: Yes.

4                   MR. MINNOCK: Okay. 33 has been withdrawn.

5                   34 can be admitted. It's a one-page letter  
6 from Michael Jonsson to Wade Roberts, that's the one the  
7 jury has already seen.

8                   THE COURT: Okay.

9                   MR. MINNOCK: 35 has been withdrawn.

10                  THE COURT: Yes, that's a duplicate.

11                  MR. MINNOCK: That was a duplicate.

12                  36, what 36 is -- I think it can be  
13 admitted -- what 36 is is this is actually the sheet  
14 that Rangen uses and checks off when they put each one  
15 of the ingredients in.

16                  THE COURT: A contemporary kind of document  
17 when the mixer's running?

18                  MR. MINNOCK: Yes. So 36 can come in  
19 without objection, and that's what that is.

20                  THE COURT: Okay.

21                  MR. MINNOCK: 37 basically can be admitted.  
22 And what it is is a two-page document that is simply the  
23 transmission from National Feeds to Rangen saying mix us  
24 up a batch of this. It's something the plaintiffs  
25 wanted, and we have no objection to it.

1 THE COURT: 38?

2 MR. MINNOCK: 38 has been withdrawn. It was  
3 duplicative.

4 THE COURT: 39?

5 MR. MINNOCK: 39. 39 may or may not come  
6 in. At this point the parties stipulate to its  
7 admission, but it may not ultimately need to come in. I  
8 think both parties were interested in perhaps something  
9 in there.

10 40, 40 has been narrowed. The only page  
11 that the parties are using is PL00023, it's the first  
12 page. It is a test result.

13 MR. HANCEY: I think that was just the  
14 original exhibit too, Joe, according to the Pretrial  
15 Order, there was only one page.

16 MR. MINNOCK: Oh, there was only one page.

17 MR. HANCEY: Yeah.

18 MR. MINNOCK: Okay. 41, 42, 43, 44, 45, and  
19 46 are all withdrawn. They dealt with an issue about  
20 rancidity that didn't arise in this case.

21 47 was withdrawn as well before we came to  
22 trial.

23 48, the pages that remain on 48 is one page,  
24 which is PL001095, and, Hans, is this one we're  
25 reserving on?

1 MR. MITCHELL: Which number?

2 MR. MINNOCK: PL00 --

3 MR. MITCHELL: What exhibit number?

4 MR. MINNOCK: 48.

5 MR. HANCEY: Well, that's your exhibit.

6 We're not introducing that, so you wouldn't have an

7 objection to it, I don't think.

8 THE COURT: 001095?

9 MR. MINNOCK: Yeah.

10 THE COURT: And that's the only one?

11 MR. MITCHELL: Right.

12 MR. MINNOCK: We want that?

13 MR. MITCHELL: Yes.

14 MR. MINNOCK: So, yeah, that one can come  
15 in.

16 Then 49 may or may not come in, depending on  
17 an issue that Mr. Mitchell is going to raise with you in  
18 a minute. This one may also deal with some of the  
19 issues involving the Griffeths. Once we know what the  
20 Griffeths situation is 49 may or may not come in.

21 So with that, all those exhibits can be  
22 admitted as far as we're concerned, except for those  
23 test results that we have some issues with and that  
24 warning letter.

25 THE COURT: All right. As identified by



1 counsel, they are received.

2 (Whereupon, Exhibits 1-4, 6-9, 10-13, 15,  
3 21, 31, 32, 34, 36, 37, 40, and 48 were  
4 received into evidence.)

5 THE COURT: Okay. Mr. Jonsson, if you would  
6 like to resume the witness chair.

7 MR. MITCHELL: Your Honor, there's a couple  
8 of matters that we would like to take up outside the  
9 presence of the jury this morning.

10 THE COURT: Okay.

11 MR. MINNOCK: Are you able to hear me?

12 THE COURT: Sure, I'm able to hear you. I  
13 always worry about my court reporter, but she's very  
14 alert, so....

15 MR. MITCHELL: Some of this was touched on a  
16 little bit when we were going through the exhibits and  
17 some of it was not, but there are two areas of inquiry  
18 that we expect to come up either today or tomorrow that  
19 we would like to have addressed outside the presence of  
20 the jury. The first area that we anticipate coming up  
21 will arise in the area of Kent Griffeth and Roger  
22 Griffeth. We expect the plaintiffs to attempt to elicit  
23 testimony from them concerning problems that they claim  
24 to have experienced on their ranches in 2010. The issue  
25 we have with that, Your Honor, is that I don't think

1     that they can show that the experience on one ranch is  
2     relevant to the experience on --

3             THE COURT: Well, that depends. Griffeth  
4     currently isn't in the witness stand, though, and you  
5     anticipate somebody is going to call him.

6             MR. MINNOCK: Correct. We expect them to be  
7     called this morning.

8             THE COURT: Okay. Well, we'll listen to him  
9     outside the presence of the jury to begin with.

10            MR. MITCHELL: And the other issue that we  
11     expect to come up likely tomorrow is going to be in  
12     dealing with Exhibit Number 14, a letter that the FDA  
13     sent to Rangen in 2010 following an inspection that was  
14     performed in July of 2009, and we're going to have  
15     significant relevance objections to that letter.

16            THE COURT: Well, you may have. And it's  
17     number 14?

18            MR. MITCHELL: 14.

19            THE COURT: Okay. All right. Well, call  
20     that to my attention before we get to it and we'll deal  
21     with it.

22            MR. MITCHELL: Thank you, Your Honor.

23            THE COURT: There's no question you got the  
24     letter.

25            MR. MITCHELL: No, not an issue of that,

1 Your Honor.

2 MR. HANCEY: And I'll just note, Your Honor,  
3 that there's no -- there were no objections reserved in  
4 the Pretrial Order on that exhibit.

5 THE COURT: You shift grounds all the time  
6 in this particular case, so let's try to be as  
7 consistent as we can be.

8 Bring the jury in, let's get started.

9 (Jury present in open court.)

10 THE COURT: Good morning folks. It's good  
11 to see you. Sit down, relax, and we'll continue on. We  
12 appreciate your help as this matter progresses.

13 Counselor, you may proceed.

14 MR. MITCHELL: Thank you, Your Honor.

15 MR. MERCER: Your Honor, I have a pending  
16 objection. When we broke there was a pending objection  
17 to the line of questioning about the tax returns.

18 THE COURT: Well, I haven't heard his  
19 question this morning, and we're not going to worry  
20 about the pending question. We're going to listen to  
21 today's question.

22 MR. MITCHELL: Thank you, Your Honor.

23 **CROSS-EXAMINATION (Cont.)**

24 **BY MR. MITCHELL:**

25 Q. Mr. Jonsson, when you select the breeders that

1     you're going to keep for your coming year you select  
2     them based on a number of factors, correct?

3         A.    Yes.

4         Q.    That includes size?

5         A.    Yes.

6         Q.    And quality of the coat?

7         A.    Yes.

8         Q.    Color?

9         A.    Yes.

10        Q.    Depth?

11        A.    Yes.

12        Q.    Length?

13        A.    Yes.

14        Q.    And litter size?

15        A.    Yes, and nap.

16        Q.    Okay. And you use the same methodology when you  
17     go out and purchase breeders from other ranchers,  
18     correct?

19        A.    No.

20        Q.    No. Okay. Can I have you take a look at your  
21     deposition, page 140, please.

22        A.    Okay. To clarify that, I already know the  
23     herd --

24        Q.    Mr. Jonsson --

25        A.    Okay.

1 Q. -- I haven't asked you a question. Let me know  
2 when you get to page 140 of your deposition.

3 A. Which one was it?

4 Q. You're in your exhibit book. Your deposition is  
5 sitting right there on the --

6 A. I understand that, but which one?

7 Q. Your deposition.

8 THE COURT: He's interested in the page and  
9 line.

10 MR. MITCHELL: He's not in his deposition.  
11 He's in the exhibit book.

12 THE WITNESS: Okay.

13 MR. MITCHELL: Page 140 please.

14 THE COURT: Does the exhibit have a number?

15 MR. MITCHELL: He's in his deposition, Your  
16 Honor, page 140.

17 THE COURT: I thought you were referring to  
18 an exhibit.

19 Q. (By Mr. Mitchell) We're at 140 now, okay?

20 A. Okay.

21 Q. Page 140 starting at line 8.

22 A. Okay.

23 Q. Question, Now, if you have to replace a breeder,  
24 okay, how do you go about doing that?

25 Answer, First you raise them, which this

1 sounds funny, but you raise them, and you pick them for  
2 confirmation size, quality, color, depth, length, and on  
3 litter size.

4 Question, Okay.

5 Answer, I purchase them the same way.

6 Did I read that correctly?

7 A. Yes.

8 Q. Let's turn for just a minute to how you've done  
9 in the years following 2010. We've seen that in 2010  
10 you reported sales revenue of \$1,427,826. Do you recall  
11 that in 2011 you reported sales revenue of \$2,520,439?

12 A. Okay.

13 Q. And in 2012 you did even better, reporting  
14 \$2,682,750.

15 A. Okay.

16 Q. Now, one, hopefully one final question for you,  
17 when you vaccinate your animals, how much of the vaccine  
18 do you administer to each animal?

19 A. 1cc per vaccination.

20 **REDIRECT EXAMINATION**

21 **BY MR. MERCER:**

22 Q. Good morning Mr. Jonsson. What is your normal  
23 practice on breeder cards?

24 A. On breeder cards you make 'em out just before you  
25 start breeding and you put new cards on every mink on

1 your ranch. It's to pick up the data that you need  
2 through breeding, like, for instance, if a mink starts  
3 breeding on the 1st of March, then you'll wait eight  
4 days and write it -- or wait eight days and then you  
5 breed 'em a second time, then you back 'em up with a  
6 different male the third time. So you've cycled the  
7 mink, they've rebred, and hopefully new eggs come on.  
8 And then you use two males to breed 'em with in case one  
9 male ain't up to snuff, and that's the data that's on  
10 the card.

11 Q. Do you use that same card to enter kit size --  
12 litter size?

13 A. Yes and no.

14 Q. Explain.

15 A. Okay. When we move 'em to Cedar Valley we  
16 massive move over 4,000 out there now, and we do not  
17 take any cards with them.

18 Q. Why not?

19 A. You can't -- the confusion of moving cards and  
20 moving mink on a pregnant mink at a critical time we  
21 just line 'em up by dates bred and year, years of  
22 females. We keep all of the same year females together  
23 so we know which ones are getting too old.

24 Q. Why don't you keep these cards?

25 A. There's no purpose after you move the mink

1 because, like in Cedar Valley you just -- there's no  
2 purpose because they're already bred, they're going to  
3 have the kits that they're going to have, and the  
4 confusion of trying to move 4,000 mink that are bred are  
5 at a delicate time and move the cards and hopefully keep  
6 'em straight is just too stressful to try to do it.

7 Q. Would you please turn to Exhibit 39. I would  
8 like to draw your attention to page 058, can you read  
9 that first entry on that page PL0058.

10 A. Baytril 100 250cc 100mg/ml.

11 Q. What's the date?

12 A. Uh --

13 Q. The left-hand side.

14 A. It would be 5/26/2010.

15 Q. What does that entry mean?

16 A. That means I purchased some baytril that day, it  
17 looks like one bottle.

18 Q. Who prescribed it?

19 A. It would be -- some of it's prescribed through  
20 the vet and some of it we can buy over the counter.

21 Q. And if it was prescribed by the vet, which vet  
22 would it be?

23 A. We had a new vet that was breaking in, and I'm  
24 pretty sure that it was Dr. Larsen at the time.

25 Q. Co-op vet?



1 A. The Co-op vet.

2 Q. That was the prescription in May of 2010?

3 A. Yes.

4 Q. Do mahogany mink consume more feed than black  
5 mink?

6 A. Yes, they do.

7 Q. Why is that?

8 A. They're a larger animal.

9 Q. What other factors affect the amount of feed  
10 consumed by the mink on your ranch?

11 A. Can I ask you to repeat that last question to  
12 make sure I heard that right.

13 Q. What other factors besides color, mahoganies  
14 versus black, what other factors affect the amount of  
15 feed consumed by the mink on your ranch?

16 A. Moisture and fat content.

17 Q. What does that mean?

18 A. An animal, when he's eating and digesting food,  
19 it's basically the solids and the proteins that he's  
20 takin' out. Water, they can drink out of a cup or --  
21 you're lookin' for a slump to put on your pen so they  
22 don't fall through, so they have to have enough moisture  
23 in it and fat. Fat is quite expensive, so they try to  
24 keep it at a minimal but necessary level for the energy.  
25 And so fat and water, if you put more fat in, they

1 consume less, if you lower the fat, they consume more.

2 If you take the water out, you buy less pounds.

3 Q. How does weaning affect the feed consumption on  
4 your ranch?

5 A. When you first wean a female from a litter, which  
6 is their offspring, the female actually goes into a  
7 stress period for a day or two, and then she comes back  
8 on feed. Actually, we skip 'em the first day and then  
9 feed 'em the second day, and that takes care of the  
10 female side.

11 On the litter side, after the mother's away  
12 from the babies, she keeps wantin' to drag 'em in the  
13 box and keep 'em around her. And when you get the  
14 mother out of there, they actually go out and start  
15 consuming more feed than they would normally because  
16 they're not lactating anymore also.

17 Q. Could I now have you set the exhibit book aside  
18 and turn to your deposition, page 106. Now, you had  
19 your deposition taken in this case; is that correct?

20 A. Yes.

21 Q. How many times?

22 A. Just once.

23 Q. That was in July of 2011?

24 A. Yes.

25 Q. And that was the only time.

1 A. I believe so.

2 Q. I'm going to read the question starting on line 8  
3 of page 106, and I would like you to read the answer.

4 Okay. Down there it looks like you asked to  
5 be compensated for an estimated 4,000 kits lost during  
6 whelping.

7 A. Uh-huh.

8 Q. Is that what we talked about, those -- that some  
9 of those died after they were born or may not have been  
10 board -- stuck -- born, stuck in the birth canal, that  
11 kind of thing, what we've talked about?

12 A. Lack of our production --

13 Q. Basically.

14 A. Basically, yeah.

15 Q. Okay. And then an estimated 1500 kits lost June  
16 to November, what is that in reference to?

17 A. Well, they -- or those 1500 kits --

18 Q. Wait --

19 A. Excuse me, I'm down one line --

20 Q. Starting on line 19.

21 A. I gotcha. That's ones that never made it until  
22 the time we shot them, vaccinatin' em. Basically once a  
23 kit is off and singled out and growing you just don't  
24 lose mink. This is over the -- this is over a month.  
25 See this is -- let's see, this is -- this is a way

1 extreme loss -- or this is a way extreme loss for --  
2 than I normally experienced.

3 Q. Would these 1500 kits be the offspring of those  
4 thousand dark kit female breeders we talked about?

5 Your answer.

6 A. It's off the Lehi ranch, but like I told you, I  
7 can't uh --

8 Q. Separate.

9 A. -- separate them. Once my guys divide them up, I  
10 can't separate -- or specifically say that it was out of  
11 the thousand kit females or some of the others. That  
12 was more to the black females.

13 Q. And we're almost done here. The next question,  
14 Okay. And then an estimated 400 old females that died  
15 during and soon after the whelping season, is that these  
16 again part of this thousand that you saw?

17 Your answer was, you're on 11.

18 A. Kits thought -- through the Lehi ranch.

19 Q. Okay. And again you can't separate them out?

20 A. No.

21 Q. I want to have you read from one more section.  
22 Would you please turn to page 90 of your deposition,  
23 line 20, page 90, line 20. Are you there?

24 A. Yep.

25 Q. Question, I just want to make sure we're talking

1 about the thousand kit black breeders and their  
2 offspring.

3 Your answer.

4 A. That were --

5 Q. That's where --

6 A. That's the majority of the problem was, yes.

7 Q. Okay. When you said "the majority of the  
8 problem," what mink was in the minority of the problem?

9 A. Describe "minority of the problem."

10 Q. Well, you said -- he said was that the black kit  
11 breeders, Mr. Minnock was asking you questions in your  
12 deposition.

13 A. Uh-huh (affirmative).

14 Q. He said was the problem in the black kit  
15 breeders, and your answer was that was the majority of  
16 the problem.

17 A. So the minority is the other part.

18 Q. The other part.

19 A. Okay. Through the ranch at that time we had had  
20 a lot more mink born, and when you find out it's most of  
21 the later litters, you have some old females that come  
22 through later, you have the kits definitely are later,  
23 and it's through the whole ranch.

24 Q. And so just so we all understand what you're  
25 talking about, when you say older females come through

1 later, what do you mean by that?

2 A. You can breed a mink, and it's like I stated  
3 earlier, the gestation is the time from when they  
4 implant to the time that they have their babies. But  
5 you can breed a female and she can be 60, 65 days out,  
6 and that puts her in the same whelping time as what the  
7 kits are. So when the fetuses are still inside the womb  
8 on the later litters that's where we was experienced the  
9 problems.

10 Q. Do you know how much water was in the National  
11 Feeds lactation crumlets? Do you know?

12 A. I believe, I believe 10 percent is what the  
13 literature I read on it was.

14 Q. Do you know how much water was in the Co-op feed?

15 A. Around 60, 65 percent.

16 Q. How do you know that?

17 A. As I sat on the feed board and on the  
18 directorship, as you purchase feed, you don't want to  
19 buy any more water than you possibly have to at 18 or 20  
20 cents a pound, so we try to minimize the water that we  
21 can, and it's also discussed so we're not buying water.

22 Q. So because of that you know how much water is in  
23 the Co-op feed?

24 A. Within a few percentages, yes.

25 Q. So how do you calculate the ratio of feed to

1 water in your 2010 mixture of Co-op feed and crumlets?

2 A. Well, you either have to -- ask that question  
3 again.

4 Q. So knowing what you've just said about water  
5 content in the crumlets and in the Co-op feed, how do  
6 you calculate the ratio of water in your mixture that  
7 you discussed yesterday?

8 A. Okay. Basically, as I'm mixing feed I'm trying  
9 to -- if I have a dry bag of feed from, say, National,  
10 and I have to mix the water, because it's supposed to be  
11 a complete feed, to get it to the same slump, by the  
12 time you put 50 pounds of water, and you've got the 10  
13 pounds of water that's already in the bag when you  
14 receive it, that's 10 percent moisture, that's  
15 60 percent roughly. Okay. Fur Breeders feed is roughly  
16 60 percent. So when we mix it we either have to do it  
17 on a wet base or we have to do it on a dry base as we  
18 calculate percentages. So if you take all the water  
19 from the Fur Breeders feed as what they've tested it as  
20 and you take the water from the National Feeds, that  
21 gives you a close percentage ratio, or you can do it  
22 overall wet against wet. So you've either got to decide  
23 if it's wet against wet or dry against dry as you do  
24 your comparisons and you get your ratios.

25 Q. What's your ratio?

1           A.    We was aiming for around 27 to 30 percent.

2           Q.    Why did you not suspect the National Feeds  
3    crumlets as the cause of your problems sooner than  
4    August of 2010?

5           A.    I had had -- like I say, most of the old mink  
6    were in -- or the major majority, three-quarters or  
7    two-thirds, they was in just as I started to mix. And  
8    just as I started to mix you're in the heaviest whelping  
9    time of the year, so you're changing them percentages  
10   per day very rapidly. When I started mixing, I wasn't  
11   experiencing the problems. By the time I finished  
12   mixing, in the area that had problems, I couldn't  
13   understand why there was good litters and bad litters  
14   down the row. But then after --

15          Q.    Did you say "down the row"?

16          A.    Down the row.

17          Q.    What does that mean?

18          A.    Mink are lined up in a row. And as I'm  
19   inspecting the babies going down the row it kind of  
20   frustrates you to understand that here's a perfect  
21   litter, here's one wiped out, here's another one wiped  
22   out, here's another one that's got two babies in it and  
23   four dead ones out in the pen, here's another litter  
24   that's just excellent and you're trying to figure this.  
25   But I wasn't matching dates. And even if I matched



1     dates I bred, I wasn't matching dates of whelping on  
2     'em.

3                     I'm so busy going through here, running out  
4     to the Cedar Valley ranch, that the problem I seen there  
5     I didn't even have time to fix, other than to tell  
6     Michael to talk to the vet about it.

7             Q.   What is the largest litter you've ever seen in  
8     your experience as a mink rancher?

9             A.   Last year I actually had a litter of 17 born and  
10    they was all alive.

11            Q.   One last question.  When you do your purchasing  
12    of -- Mr. Mitchell just asked you about purchasing live  
13    mink and he asked you if you used the same criteria for  
14    choosing live mink as you do when you choose your  
15    breeders, and you said no.  Who actually does -- who  
16    actually applies the criteria when you go out to buy  
17    mink, the seller or you?

18            A.   Okay.  As I buy mink I know the reputation of the  
19    mink rancher and I know his stock and I know what it is.  
20    I'm not buying a specific mink, I'm buying the genetic  
21    line that he has, and his genetic line usually matches  
22    my critique of mine, but he picks it himself.

23            Q.   Do you have any -- what control do you have over  
24    the price that a pelt sells for at the auction?

25            A.   I have no control.

1 Q. So if the price per pelt goes up because of the  
2 demand, what happens to your income?

3 A. The ratio between profit and production goes up  
4 extensively.

5 Q. Finally, when you destroyed those breeder cards  
6 that we talked about did you have any idea that the  
7 National -- the National Feeds lactation crumlets were  
8 the cause of your problem?

9 A. No, I didn't.

10 MR. MERCER: No other questions.

11 THE COURT: Do you have anything else?

12 MR. MINNOCK: None from me, Your Honor.

13 MR. MITCHELL: Just briefly, Your Honor.

14 **RECROSS-EXAMINATION**

15 **BY MR. MITCHELL:**

16 Q. Mr. Jonsson, would you turn back to page 90 of  
17 your deposition that you just looked at with Mr. Mercer  
18 please.

19 A. Okay.

20 Q. Okay. He had you start reading beginning on line  
21 20. I want to start just a little bit before that,  
22 starting at line 5. Question, Okay. That's what I'm  
23 wondering is were you calling Dr. Larsen because you  
24 said your herd didn't look good. When you said your  
25 herd didn't look good, are you talking about this group

1 or talking about the thousand?

2 Answer, The females, yes.

3 Question, Females.

4 That -- answer, That is where it was showing  
5 more prevalent.

6 Question, On the rest of your herd did you  
7 notice any problems?

8 Answer, I never noticed a problem in the  
9 rest of the herd.

10 Did I read that correctly?

11 A. Yes.

12 MR. MITCHELL: Thank you.

13 THE COURT: Thank you, sir. You can step  
14 down.

15 Call your next witness.

16 MR. HANCEY: Our next witness, Your Honor,  
17 is Michael Jonsson.

18 THE COURT: Sir, if you'll come forward and  
19 be sworn.

20 **MICHAEL JONSSON,**

21 called as a witness at the request of the Plaintiff,

22 having been first duly sworn, was examined

23 and testified as follows:

24 THE CLERK: Please take a seat and state and  
25 spell your name for the record please.

1 THE WITNESS: Michael Jonsson,  
2 J-o-n-s-s-o-n.

3 THE COURT: Lean into the mic so everybody  
4 hears you.

5 **DIRECT EXAMINATION**

6 **BY MR. MERCER:**

7 Q. Can you give us your address please, Mr. Jonsson.

8 A. 9740 North Heiselts, that's H-e-i-s-e-l-t-s,  
9 Hollow Drive, Cedar Hills, Utah, 84062.

10 Q. How long have you lived in Cedar Hills, Utah?

11 A. Approaching four years.

12 Q. Is that by Cedar Valley?

13 A. No. It's more proximity to American Fork Canyon.

14 Q. How old are you?

15 A. 32.

16 Q. Married?

17 A. Yes.

18 Q. Children?

19 A. Yes.

20 Q. How many?

21 A. Three.

22 Q. Ages?

23 A. Eight, five and five.

24 Q. What do you do for a living?

25 A. Raise mink.

1 Q. How long have you been in the mink business?

2 A. Born and raised.

3 Q. What's the name of your employer?

4 A. Cedar Valley Fur Farm.

5 Q. Is that the one owned by your father Keith  
6 Jonsson?

7 A. Correct.

8 Q. What are your responsibilities as an employee of  
9 Cedar Valley Fur Farm?

10 A. All duties. Overseeing daily operations. I mean  
11 I could go on for hours, but feeding, watering, I'm  
12 just -- paying bills, paying payroll, all that sort of  
13 stuff.

14 Q. Do you ever sell mink in your own name?

15 A. I do.

16 Q. Why do you do that?

17 A. When we get to the point where we're taking mink  
18 to market, you know, you have your lower-end mink, you  
19 know, damaged, off-season mink, usually those are the  
20 ones that we market under my name just to kind of have a  
21 subset just to see what they average versus the better  
22 quality.

23 Q. Are those mink separated at any time on the ranch  
24 in the way they are fed and bred?

25 A. Not in the way they are fed and bred. It's

1 usually during harvesting season or if it's early pelts,  
2 like casualties.

3 Q. Do you have your own feed account?

4 A. I do.

5 Q. With the Co-op?

6 A. Correct.

7 Q. Is your feed sent separately from Keith Jonsson's  
8 feed?

9 A. It's sent on the same truck, pumped off the same  
10 time, it's just billed separately.

11 Q. Why is it billed separately?

12 A. Just to have the individual account because at a  
13 time, if needed, if I had to have my own account during  
14 certain times of -- or not during certain times of the  
15 year, during certain years they may limit new accounts,  
16 so I'm just establishing an active account now.

17 Q. I hate to say it this way, but if dad doesn't  
18 last forever, that takes care of that contingency?

19 A. It's one of those things, it's inevitable, but we  
20 are just resolving the situation now if they don't see  
21 it, you know, at the Co-op.

22 Q. Are you a member of the Fur Breeders Agricultural  
23 Co-op then?

24 A. Yes.

25 Q. How long have you been a member?

1 A. I believe five, six years.

2 Q. Have you held any positions in the Co-op?

3 A. I have.

4 Q. What?

5 A. I was on the feed committee.

6 Q. How long?

7 A. Usually it's a voluntary two-year term.

8 Q. What were your responsibilities as a member of  
9 the feed committee?

10 A. They present us diets, comparable diets versus  
11 previous years, one that they would like to run versus a  
12 third option, and we vote on those. And also I have a  
13 few ranchers that I make contact with, and then when we  
14 go to our meetings we report information from them plus  
15 information from our ranch.

16 Q. What kind of hours do you work, by the way, as a  
17 mink rancher?

18 A. It ranges from seasonally, you know, it could be  
19 7 days a week 12 hours a day, if needed, down to the  
20 slow times of the year, you know, 8 to 5. It just  
21 depends on the demand.

22 Q. Mink have to be fed everyday I guess.

23 A. For the most part everyday. Some times of year  
24 only six days a week.

25 Q. Can you describe the cleaning and sanitizing

1 process on your mink ranches.

2 A. Concerning sanitation, we usually -- the main  
3 sanitation time is just prior to post-breeding but prior  
4 to whelping. We'll go through and all of our pens that  
5 we whelp the babies in we go through and pressure wash  
6 all the pens, all the boxes, disinfect them. The  
7 nesting product we use they consider a sterile product.

8 Q. What do you mean, what's a nesting product?

9 A. Just the bedding, the wood shavings. What we use  
10 for whelping it's called aspen bedding. We use that,  
11 that's the one time of year that we use that. We put it  
12 in the nest box, which generally looks like a bird  
13 house, but, you know, a little bigger, bigger hole, of  
14 course, for the mink to go in and out. We prep that box  
15 for them. Inside the pen we put a false bottom, it's  
16 just to protect the babies from falling out when they're  
17 smaller or, you know, younger. And just prior to  
18 whelping, within a few days before their anticipated  
19 whelping date, we move the mink from their smaller pen  
20 into the bigger whelping pen.

21 Q. And, again, I'm sensitive that we keep using this  
22 term whelping and we -- it's hard to get used to this  
23 term, whelping means?

24 A. Having babies.

25 Q. Having babies.



1                   Is the offspring of a black male and a black  
2 female always black in color?

3           A. Not necessarily. Genetically, yes, but -- I mean  
4 it's -- there's a lot of interpretation, and ultimately  
5 the auction house decides that.

6           Q. What do you call a brown kit that comes from a  
7 black father and a black mother?

8           A. Until it hits the auction house it's raised,  
9 born, bred, raised, harvested as a black and shipped to  
10 as a black, and then it's lotted at the auction house.  
11 Ultimately, we would assume it's a brown if it's sold as  
12 a brown.

13          Q. What other ways do you categorize the mink on  
14 your ranches besides mahogany and black, are there other  
15 categories?

16          A. Years, sex, you know, male, female. Basically  
17 the terms I would use old male, old female, kit male,  
18 kit female, then, of course, black and mahogany.

19          Q. How many kits per litter do you expect your --  
20 generally speaking, how many kits per litter do you  
21 expect your mahogany breeders to produce?

22          A. Usually we're looking at a six.

23          Q. How about the blacks?

24          A. Five.

25          Q. I would like now to turn to your 2010 season,

1     when did you begin mixing the National Feeds lactation  
2     crumlets with the Co-op feed?

3         A.    I believe it was either the 24th or 25th of  
4     April.

5         Q.    And how did you get the crumlets?

6         A.    I drove to Kent Griffeth's ranch in Lewiston,  
7     Idaho, and received them from him and hauled them down  
8     to Lehi.

9         Q.    What quantity did you pick up?

10        A.    Six pallets, approximately 12,000 pounds.

11        Q.    Where did you take it?

12        A.    To our Lehi ranch.

13        Q.    Where did you store it?

14        A.    At the beginning we stored it on the trailer, and  
15     then when we got down to very minimal quantities we  
16     moved it inside as we finished the last few days.

17        Q.    Inside what?

18        A.    Just inside of our shop there.

19        Q.    Who did most of the mixing of the crumlets with  
20     the Co-op feed most of the time?

21        A.    I did.

22        Q.    Would you please describe the mixing process.

23        A.    The Co-op, they deliver their feed into the feed  
24     tank, which is the silo-shaped storage tank, then --

25        Q.    Is that elevated?

1       A.    Elevated.

2       Q.    How high up?

3       A.    Above ground.    The bottom of the tank is usually  
4    about five feet off the ground so you can pull the  
5    machine under it.    Then we discharge it into our feeding  
6    machine, then we add a pipe, instead of just a hand-held  
7    hose, we had a pipe to pump it up into the mixer.    And  
8    then you climb up on the scaffolding while it's pumping  
9    in, we pre-wet the mixer for -- so it doesn't bind or  
10   adhere to the sides, you know, it does, but just not as  
11   much as -- you just try to resolve that.    Then once  
12   there's say 150, 200 pounds of Co-op feed in, I'll add  
13   one bag of National crumlets, it mixes, you know, while  
14   another hundred pounds or so of Co-op feed goes in.    I  
15   may or may not add a little bit more water at that time,  
16   depending on the consistency, then I'll add the second  
17   bag of crumlets, then I'll continue adding Co-op feed,  
18   and on and off adding water based upon consistency.  
19   Then at the point that it's full, I cease the Co-op feed  
20   going in, then it continues mixing for at least -- most  
21   times 10, 15, 20 minutes longer until the machine's  
22   available that we discharge it into the machine that  
23   we're feeding with.

24       Q.    Do you actually mix the whole mixture for up to  
25   20 minutes?

1       A.   Usually 10 to 15, 20 minutes the first batch, you  
2       know, we run it until we feel it's ready, then it goes  
3       in the machine.   The next batch I mix right behind it,  
4       but it could take 20 to even 40 minutes to feed out the  
5       next machine.   So, you know, it could vary.

6       Q.   So what is the total combined weight of the Co-op  
7       feed, crumlets, and water in the mixture -- in the  
8       mixture?

9       A.   We've always felt it's about 750 to 760 pounds,  
10      about three-quarters of the feed machine, which  
11      generally holds about a thousand pounds.

12      Q.   So for each mixture, give me the recipe for the  
13      three ingredients, how much?

14      A.   Hundred pounds of crumlets, we usually figure a  
15      hundred pounds of water, and then the difference would  
16      be 550 to 560 pounds of Co-op feed.

17      Q.   How do you calculate the ratio of water to feed?

18      A.   Based on total mixture or based on --

19      Q.   Well, you tell me.

20      A.   I mean when we're looking at dry National  
21      crumlets versus Co-op feed we look at it as a dry  
22      matter, so if you remove the water from both, we  
23      calculate it that way.

24      Q.   What's your calculation?

25      A.   If you look at National crumlets, they have 10

1 percent water, if you look at Co-op feed, let's say  
2 60 percent water, that would give you 310 pounds, so you  
3 would divide 310 into 90, so 28 percent.

4 Q. 28 percent crumlets --

5 A. Crumlets to --

6 Q. Now the water.

7 A. Yes.

8 Q. Why is consistency so important as you're making  
9 this mixture?

10 A. At the time when you're feeding it, you know, we  
11 lay the feed on top of wire, you know, you kind of  
12 actually push it -- you want to lay it on top so it  
13 doesn't fall through, but at the same time you want to  
14 push it down so they have access to pull it down in. If  
15 it's too wet it falls through, and, yes, it will fall  
16 through onto the false bottom, but at the same time you  
17 want to restrict the access of the feed at a point to  
18 the kits.

19 Q. How many batches did you mix per day during  
20 whelping?

21 A. At the beginning one to two batches, then by the  
22 time we were finished up I'm thinking maybe five, maybe  
23 up to six.

24 Q. When did you run out of crumlets?

25 A. Sometime about the end of the first week in June.

1 Q. Did you ever feed National Feeds' lactation  
2 crumlets to any mink at the Cedar ranch in 2010?

3 A. No.

4 Q. Did you experience any problems with your Lehi  
5 mink herd in 2010?

6 A. Yes.

7 Q. Tell me about the problems.

8 A. As we were mixing the crumlets --

9 Q. First, when did these problems begin?

10 A. The 2010 season?

11 Q. Yes.

12 A. We started noticing the problems right around the  
13 beginning of May.

14 Q. Now, tell me about the problems. Sorry.

15 A. As I was mixing feed, the crumlets into the Co-op  
16 feed, as my father, he would come over to the feed  
17 machine, between walking through the mink or while he  
18 was feeding, he would state how -- you know, they just  
19 seemed to be having a lot of issues. And, you know, the  
20 first day it's just, you know, I guess we didn't look  
21 into it too much because, you know, every once in a  
22 while you just do have a bad day on whelping, but it was  
23 more extreme than normal. But then by the second and  
24 third day we knew we had a serious issue, but within  
25 four or five days your whelping season is done. So by

1 the time you realize you have a major problem you're  
2 over.

3 Q. Did you personally observe problems with the  
4 mink?

5 A. You know, not too extensive, but, you know, he  
6 did take me out. You know, as I'm mixing, I do not  
7 leave that mixing facility just for the liability.  
8 There's a few times I may have shut the mixer off, shut  
9 all the machinery down, and, yes, walked over there, and  
10 he just, you know, kind of like look at this and -- but  
11 I didn't walk down the full row, you know. I just -- he  
12 just showed me some of the devastation.

13 Q. And when you did that what did you observe?

14 A. I observed multiple pens with dead babies out in  
15 the pens. There was some pens where he found a dead  
16 mother and placed them on top of the pen that we had  
17 retrieved later while we were feeding. You just -- some  
18 of the females that you would see in the pens they just  
19 weren't normal, like their nesting in their boxes, they  
20 just -- usually their nesting, it's kind of dished,  
21 like, you know, picture a bird's nest in the bottom, but  
22 they were flat. Typically when you see a flat nest, it  
23 either means, you know, you find her dead or she lost  
24 her kits or, you know, there's just something  
25 substantially wrong.

1 Q. Did you make any determination about which mink  
2 were particularly affected?

3 A. At the time we noticed the majority of the  
4 problem in our kit black females, but at the same time  
5 you have old females still whelping, so -- but they're  
6 kind of more spread out, you know, there's 3,000 old  
7 females on the ranch, so it's kind of more spread out,  
8 so you don't notice the problem as substantial notice.

9 Q. Why were those older females whelping later?

10 A. They're just -- I mean later breeders. I mean  
11 it's not a perfect science when you breed. You know, if  
12 you start on the 1st and they cycled on say the 28th of  
13 February, they may not breed for the first time until  
14 the 5th or the 6th of March, so they re-mate on say the  
15 14th or 15th of April, which is typically when you're  
16 re-mating a kit female.

17 Q. How did the mink at the Cedar Valley ranch do in  
18 the 2010 season?

19 A. Above expectations.

20 Q. What did you observe at the Cedar Valley ranch in  
21 2010 that was out of the ordinary?

22 A. As I was going through counting kits, I mean,  
23 just unheard of numbers, just very, you know, very  
24 steadily consistent quantities. You know, in the sheds  
25 out there they hold approximately 500 females, and out



1 of 500 females you might find 10 up to 20 that didn't  
2 have kits, where a lot of, you know, you could expect up  
3 to 30 out of 500 not having kits, but a lot of sheds we  
4 were only seeing 10.

5 Q. When you say "unheard of numbers," what do you  
6 mean?

7 A. Just production.

8 Q. What does that mean?

9 A. Kits per litter. We shoot for a six, you know, a  
10 lot of times you're at a five/eight, five/nine, but I  
11 believe one of the sheds had a six/four, and -- but most  
12 I think overall average on that ranch was right around  
13 above a six instead of just below a six.

14 Q. Did you estimate your mink losses in 2010?

15 A. Yes, I did.

16 Q. What was your estimate?

17 A. After, you know, totaling the babies -- totaling  
18 the kits to present to our bank, I went through and  
19 concluded approximately 4,000 kits died at the time of  
20 whelping, then later on in the year, I came up with 1500  
21 that died through the season based upon, you know,  
22 casualties that we had in the freezer and from our  
23 initial count versus our main harvesting count.

24 Q. Any other losses?

25 A. Old females that died -- well, that died during

1 or right after whelping I came up with about 400. There  
2 was I believe about 450, but I took into account normal  
3 losses. So I resolved it to about 400 that was  
4 extraordinary.

5 Q. This is important, so I want to go through these  
6 three numbers and have you tell me exactly how you made  
7 the estimate, tell me exactly how you estimated the  
8 4,000.

9 A. I took the total kit counts of each subsection of  
10 the mink at that ranch being kit black females, old  
11 black females, old mahogany females, and in the old ones  
12 it -- you know, it wasn't too out of the ordinary, but  
13 the main difference was in the kit females, so I took a  
14 thousand kit females, of course, times a five, minus --  
15 or that minus what we actually had and came up with  
16 approximately 4,000 or above there.

17 Q. You should have had 5,000, you only got a  
18 thousand.

19 A. Yes.

20 Q. Tell me exactly how you calculated the 1500 from  
21 June to November.

22 A. The 1500 was based upon our total kit count for  
23 that ranch, then when we get to the later part of the  
24 season when we did a secondary count just for, you know,  
25 the bank may call every once in awhile saying, hey, can

1 you give us an up-to-date count, it was just before we  
2 start skinning or harvesting, like in November, and then  
3 also based upon what was in the freezer, I came up  
4 with -- there was about 1500. You know, I took into  
5 account normal losses, and what seemed to be  
6 extraordinary was an additional 1500.

7 Q. Tell me exactly how you calculated the 400 adult  
8 females that you lost.

9 A. When we go to whelp the females, you know, of  
10 course we know at that day and time say on April 20th we  
11 know exactly how many females are in the pens having  
12 babies. Then after we wean them and we line the females  
13 up, we take a secondary count, and we knew our losses at  
14 that time. And then within a few days we had some more  
15 losses, so we consolidated them again and did a third  
16 count. And we seen we were down about 450. You know,  
17 on 4,000 females, between whelping and weaning, you  
18 know, you could see 30 or 40 loss -- you know, females  
19 dying, you know. I rounded it off and said 400. That  
20 seemed to be substantial.

21 Q. Mr. Jonsson, can I now have you take the exhibit  
22 book and please turn to Exhibit Number 1. Are you  
23 there?

24 A. Yes.

25 Q. Turn over one page to the third page, which talks

1 about breeding stock for 2010, do you see that?

2 A. Is it the PL28?

3 Q. Yes.

4 A. Okay.

5 Q. Please also look at 29.

6 A. Okay.

7 Q. What does that tell you -- what is that document?

8 A. This is January 19th, 2010, that Co-op sent out a  
9 breeder stock survey, it's just basically saying please  
10 estimate what you're anticipated breeders is for this  
11 upcoming season.

12 Q. What was yours in January of 2010?

13 A. Combined total is 7,000.

14 Q. And but include the ones on PL29 please.

15 A. Yes, that's including those. Oh, I'm sorry, I  
16 meant to include them, but 8,000.

17 Q. So you told the Co-op we're going to have 8,000  
18 breeders in 2010.

19 A. Yes.

20 Q. Can I have you turn please to Exhibit 2.

21 A. Okay.

22 Q. Turn please to the third page -- or PL243, titled  
23 Western AgCredit.

24 A. Okay.

25 Q. Who is Western AgCredit?

1 A. That is who we do our financing through.

2 Q. This is a note to the file, but it says Mike  
3 Jonsson called with the following inventory mink on hand  
4 as of today; is that correct?

5 A. Yes.

6 Q. Do you recall calling Western AgCredit in August  
7 of 2010 and giving them some mink figures?

8 A. Yes, I do.

9 Q. What does it say you told him about the kit  
10 count?

11 A. I stated 38,377 as mixed kits.

12 Q. 38,377. And how many kits did you expect to have  
13 at that time?

14 A. I believe rough math about 43,000.

15 Q. Okay. What did you report for mature female  
16 breeder mink, what number?

17 A. 7,477.

18 Q. So what's 8,000 minus -- roughly what's 8,000  
19 minus 7477?

20 A. It would be 523.

21 Q. Does that account for the lost female breeders?

22 A. Those 400 would be within those 523.

23 Q. On that first number, the 38,000, does that  
24 account for the 4,000 or the 5500 lost kits?

25 A. If we wouldn't have lost the 4,000, it would be

1 added to that number.

2 Q. Okay. And that's the 43,000 you told me about.

3 A. Yes.

4 Q. And finally, Mr. Jonsson, could you turn to  
5 Exhibit 15, what is that?

6 A. This is a letter, or copy of a letter, that I  
7 wrote to Ed Buschur, the, I guess, president of National  
8 Feeds.

9 Q. When did you write that?

10 A. It's dated November 5th, 2010.

11 Q. Do you recall writing that letter?

12 A. I do.

13 Q. What did you tell Mr. Buschur in that letter  
14 about -- well, read what you said, starting with the  
15 words "So to sum things up"?

16 A. So to sum things up as -- we would ask to be  
17 compensated for an estimated 4,000 kits lost during  
18 whelping, an estimated 1500 kits lost June through  
19 November, also an estimated 400 old females that died  
20 during and soon after whelping season, in addition a  
21 guaranty in writing --

22 Q. That's --

23 A. Okay.

24 Q. And when did you write this to National Feeds?

25 A. November 5th, 2010.

1 MR. MERCER: No other questions.

2 MR. MINNOCK: I'm prepared to proceed, Your  
3 Honor. I'll just set up here a little bit.

4 Mr. Jonsson, I apologize.

5 **CROSS-EXAMINATION**

6 **BY MR. MINNOCK:**

7 Q. Let's start with where you left off with  
8 Mr. Mercer. So looking at Exhibit 1 that you looked at,  
9 I think you and he calculated that for the year 2010 you  
10 had 9,000 breeder mink in total, correct?

11 A. That's incorrect.

12 Q. I'm sorry, 8,000, 8,000 in 2010. I've got to get  
13 my eraser here. Okay. So let's start over. In 2010  
14 you had 8,000 breeder mink, right?

15 A. Correct.

16 Q. And in 2009, if you look at the first two pages  
17 of Exhibit Number 1 -- or actually the following two  
18 pages beyond what you were just looking at for 2010,  
19 your father reported he was running 8,000 breeders and  
20 you reported you were running 1,000 breeders, right?

21 A. That's what the survey says, yes.

22 Q. That's the numbers that you gave the Co-op,  
23 right?

24 A. Yes.

25 Q. All right. Now, you ran 9,000.

1                   So you participated with Wade Roberts in the  
2 preparation in providing him some information to help  
3 him quantify the losses that you thought you suffered,  
4 right?

5           A.    Yes.

6           Q.    And this was a letter that you provided to him,  
7 this is Exhibit 34. In fact, I'm going to actually  
8 write on here 34 so I don't forget. And you gave him  
9 this data as to your actual sales during this time  
10 period, right?

11          A.    Yes.

12          Q.    And you got this from the records that you have.

13          A.    Yes.

14          Q.    And it shows that in 2010, which would be from  
15 this 2009 crop of 9,000 breeders, right, you sold 29,861  
16 mink, right?

17          A.    Yes. But the survey doesn't reflect the actual  
18 number.

19          Q.    Well, it doesn't reflect the actual number.

20          A.    No.

21          Q.    So when you told Mr. Mercer that you did this  
22 little math with him where you said 8,000 minus the 7477  
23 and you said there were 523 mink, you're telling me that  
24 analysis was incorrect.

25          A.    That number is -- the 8,000 minus the 7477, that



1 number's correct, but the 8,000, when it actually came  
2 down to breeding season, the number was seven nine  
3 hundred, so 7900. But in 2009 that number I believe was  
4 7600.

5 Q. So the numbers that you spoke about when  
6 Mr. Mercer had you go through Exhibit 1 you thought  
7 those numbers were correct for 2010, but the ones for  
8 2009 you think are incorrect. Or you actually think  
9 they're both incorrect.

10 A. I believe both of those numbers are incorrect.

11 Q. Okay. So you think then in 2010 you had how  
12 many?

13 A. 7900.

14 Q. 7900. And in 2009 you had 7600.

15 A. I believe so, yes.

16 Q. All right. So now we're on the same page. 7600  
17 mink produced 29,861 in sales, right?

18 A. I guess, yes. I would assume so, yes.

19 Q. 7900 breeders produced 36,520 in sales, right?

20 A. I believe so, yes.

21 Q. Okay. So the addition of 300 breeders to your  
22 herd resulted in about a little over 6600 additional  
23 mink sold, right?

24 A. That's the way it would look, yes.

25 Q. But you claim that in addition to the 6600 you

1 would have had another 4,000 mink from these 300  
2 additional breeders, right?

3 A. Yes.

4 Q. So, in other words, 300 mink would produce an  
5 extra 10,600.

6 A. Yes. And other factors, yes.

7 Q. So we're talking there about each one of these  
8 mink producing on an average about 30 kits per litter.

9 A. That's the way you interpret it, but it's not.

10 Q. That's not what you're saying.

11 A. No.

12 Q. Okay. But the reality is when we look at your  
13 herd as a whole, you had 300 extra breeders and wound up  
14 with 6600 mink, and yet you still believe you suffered a  
15 loss.

16 A. If you look at it on paper it looks to be that  
17 way, but in actuality there's more to the story.

18 Q. Well, let's look at the next part of the story  
19 then. You told Mr. Mercer that on average you want six  
20 mink, mahogany mink kits per litter, right?

21 A. As we go into each season that's what we  
22 anticipate.

23 Q. And five of the blacks, right?

24 A. Correct, yes.

25 Q. Okay. Now, you saw the analysis that Wade

1 Roberts did on your behalf, right?

2 A. The analysis that -- I didn't hear that last  
3 part, I'm sorry.

4 Q. That he did on your behalf.

5 A. I viewed it, yes.

6 Q. And his findings were that you never averaged  
7 five black mink at any point in the last -- well, for  
8 any year for which we have data.

9 A. I don't know what his averages are based on,  
10 whether it's sales or production, I don't know.

11 Q. Okay. But at least in terms of going to market  
12 you've never actually averaged five.

13 A. If it's market averages, that's the  
14 interpretation of the auction house.

15 Q. Okay. Let me ask you about that while we're at  
16 it. You said that two black can make a mahogany, right?

17 A. When they produce the baby, we believe it's a  
18 black, but it's the auction house that determines if  
19 it's a mahogany.

20 Q. So what you're saying is some of these black mink  
21 that should be in this column may in fact be in this  
22 column down in the mahogany.

23 A. Basically, yes.

24 Q. So on this chart that we're looking at from  
25 Dr. Roberts' report, page 13 of his report, if anything

1 is understated it's the black mink.

2 A. I would believe so. I mean some years maybe more  
3 so than others.

4 Q. Okay. Now, this reflects, this finding was that  
5 you actually had your best year in black kits per litter  
6 of any year in five years prior to that; do you agree  
7 with that?

8 A. He prepared --

9 Q. I asked you a bad question. I'm asking if you  
10 agree with his conclusion that that was your best year  
11 for blacks in five years.

12 A. It's his conclusion, so I don't -- I don't -- I  
13 can't testify to that.

14 Q. You haven't done -- you haven't done any analysis  
15 as to whether you believe that it was your best year for  
16 black in five years.

17 A. I mean I know my numbers, but I can't interpret  
18 his numbers.

19 Q. Okay. Now, you did talk a little bit about some  
20 of the numbers that you had and you talked to the jury  
21 about how you would average six and things like that.  
22 There's no documentation anywhere that reflects that,  
23 correct?

24 A. If it was, it would have been provided.

25 Q. All right. With respect to these -- there were

1 1500 mink you referred to that died between June and  
2 November; do you remember that testimony?

3 A. Yes.

4 Q. You also said that there were 400 older breeders  
5 that may have died, right?

6 A. Yes.

7 Q. Okay. So we've got about 1900. You would have  
8 saved those mink in your freezer, right?

9 A. For the most -- most of them, yes.

10 Q. And ultimately you would have sold them at the  
11 auction.

12 A. Correct.

13 MR. MINNOCK: Okay. All right. I think  
14 that's all the questions I have for you, sir. Thank  
15 you.

16 THE COURT: Let me give you a break, folks,  
17 15 minutes. Remember what I told you, don't talk to  
18 anybody about the case. We'll be in recess for  
19 15 minutes.

20 (Recess.)

21 THE CLERK: Court resumes session.

22 (Jury outside open court.)

23 THE COURT: We're all here. Let's bring in  
24 the jury.

25 MR. HANCEY: Your Honor, before we bring in

1 the jury, we have an issue to address about the witness  
2 order and timing because we have some people coming from  
3 distances. We've got Michael Jonsson, who's about to  
4 finish up, and then we're going to put on the Griffeths,  
5 who are waiting out in the hall. They've driven down  
6 from the Preston, Idaho area. Is there a chance we  
7 could go a little bit into the lunch hour, we're not  
8 going to be very long on direct anyway, and get them on  
9 the road back up to Idaho before we break for lunch?

10 The other issue to that is our next witness  
11 will be driving down from Logan, and I want to be able  
12 to give him enough advance notice to make sure he's here  
13 on time. I'm trying to juggle all of that.

14 THE COURT: We'll break until 1:30.

15 MR. HANCEY: Break at 1:30 for lunch?

16 THE COURT: No. We'll break at noon for  
17 lunch, or shortly thereafter, and we'll be in recess, as  
18 far as this case goes, until 1:30. I've got a couple of  
19 other minor matters prior to that. But that will give  
20 you some timing concept in reference to them.

21 MR. HANCEY: I appreciate that.

22 THE COURT: Are the Griffeths to be heard  
23 outside the presence of the jury?

24 MR. MITCHELL: For at least a portion of it,  
25 Your Honor, yes.

1 THE COURT: I'm sorry?

2 MR. MITCHELL: For at least a portion of it,  
3 yes, Your Honor.

4 MR. HANCEY: And we object to that. We  
5 think the jury gets to hear what they have to say.

6 THE COURT: Well, no. What we're saying is  
7 that we'll hear them and see if he's got a legitimate  
8 objection.

9 MR. HANCEY: Oh, fair enough.

10 THE COURT: Do the best we can. They may  
11 have to wait, depending on the timing.

12 MR. HANCEY: Okay, fair enough.

13 THE COURT: Okay. Bring them in.

14 (Jury present in open court.)

15 THE COURT: Sit down and relax, folks. I'll  
16 note for the record the jury is present, counsel and the  
17 parties present.

18 And you may proceed, counselor.

19 MR. MITCHELL: Thank you, Your Honor. Can I  
20 have the hand mic please?

21 THE CLERK: Yes.

22 **CROSS-EXAMINATION**

23 **BY MR. MITCHELL:**

24 Q. Mr. Jonsson, did I hear you correctly in your  
25 earlier testimony that you're the guy that pays the

1 bills around the place?

2 A. Yes.

3 Q. Okay. Would you turn to Exhibit 4.

4 A. Okay.

5 Q. And what are the documents in Exhibit 4?

6 A. They range from -- I believe these are all  
7 monthly statements. I say that because you can get  
8 semimonthly statements, but these all believe to be the  
9 monthly statements.

10 Q. Monthly statements of what?

11 A. Feed delivered.

12 Q. By the Fur Breeders Co-op?

13 A. Correct.

14 Q. Now, if you can find them quickly, I'm happy to  
15 give you some numbers to look for, otherwise I've got  
16 them handy here and I've got them blown up on the  
17 screen.

18 A. Give me the numbers and I'll --

19 Q. Okay. So let's take a look at the feed  
20 statements for the months of April through June 2010 for  
21 both you and your father. We're looking at document  
22 numbers FBAC0834, 0833, and 0835 in one group, and 0759,  
23 758, and 757 in the other. Let me know when you find  
24 those.

25 A. Okay.



1 Q. Now, are these statements the feed statements for  
2 the deliveries to your Lehi ranch in April through June  
3 of 2010?

4 A. I wouldn't see otherwise, no -- or, yes, I  
5 wouldn't see otherwise.

6 Q. So if we look starting with your group of feed  
7 statements, that would be the group of 833 through 835,  
8 and we look starting at the end of April, I realize it's  
9 tough to see with the lighting in here, but it looks  
10 like you had delivered on the 28th and the 30th a  
11 thousand pounds of feed each day.

12 A. Correct.

13 Q. Then as we look at 834, because that's the entire  
14 month of May, you fed the crumlets for the entire month  
15 of May, we're going to look at the total, and you had  
16 15,000 pounds of feed delivered for the month of May,  
17 correct?

18 A. Yes.

19 Q. Okay. Then we had the crumlets being fed for a  
20 portion of June, and I've looked at the first week of  
21 June through the 7th, and it looks like you had  
22 500 pounds of feed delivered everyday except for the  
23 3rd, am I reading that correctly?

24 A. That's what it looks like, yes.

25 Q. So for a total of six days we're looking at a

1 total of 3,000 pounds delivered at 500 pounds a day.

2 A. Yes.

3 Q. So as we then turn to your father's and we start  
4 looking at April, we're looking at the same period we  
5 looked at for you, starting on the 28th, 2,000 pounds of  
6 feed delivered, and it looks like 1200 pounds for a  
7 total of 3200 pounds delivered on those two days, am I  
8 reading that correctly?

9 A. Yes.

10 Q. Then we get down to the monthly total for May,  
11 53,100 pounds of total wet feed delivered to your  
12 father's account at Lehi.

13 A. Yes.

14 Q. Okay. And then finally for May -- I'm sorry, for  
15 June, looking again to the 7th of June, we're seeing six  
16 deliveries at 3600 pounds of delivery, am I reading that  
17 correctly?

18 A. Yes.

19 Q. Okay. So when we add those together, I get a  
20 total of 97,900 pounds of feed that was delivered during  
21 that time period. Okay? Are you in agreement with  
22 that?

23 A. You did the calculations, so....

24 Q. Do you have any reason to disagree with it?

25 A. It sounds close.

1 Q. Okay. So assuming that I've done my calculations  
2 correctly, you also added in 12,000 pounds of lactation  
3 crumlets during that same time period, correct?

4 A. Yes.

5 Q. Okay. And then you would have added in an  
6 additional approximately 12,000 pounds of water to get  
7 it to the correct consistency?

8 A. Approximately, yes.

9 Q. And so the total amount of feed that was fed over  
10 that time period would be 121,900 pounds total, correct?

11 A. By your math I would assume so, yes.

12 Q. Now, during the time period that you were  
13 noticing problems, or that the problems were going on  
14 with the mink, you didn't notice any vomiting associated  
15 with the mink on the Lehi ranch, did you?

16 A. I don't inspect the mink daily. That's something  
17 my father did.

18 Q. That wasn't really my question. My question was  
19 when you did go look you didn't notice any vomiting, did  
20 you?

21 A. The few amounts of mink that I looked at I didn't  
22 visually see anything. I would agree.

23 Q. With the mink that you did look at, you didn't  
24 notice any diarrhea.

25 A. I wasn't specifically looking for it, but I

1 didn't especially notice it, no.

2 Q. And you didn't notice any bloated or distended  
3 stomachs, correct?

4 A. I was just noticing the dead babies.

5 Q. And that was it really, that was all you saw.

6 A. Just dead babies and some dead females.

7 MR. MITCHELL: Okay. Those are all my  
8 questions. Thank you.

9 THE COURT: Anything else?

10 MR. MERCER: Yes, Your Honor.

11 **REDIRECT EXAMINATION**

12 **BY MR. MERCER:**

13 Q. Mr. Jonsson, so we looked at Exhibit 1 which  
14 showed you reported 8,000 females when you were  
15 reporting to the Co-op for your estimation in January of  
16 2010; is that right?

17 A. Yes, that's the estimation.

18 Q. You ended up with how many females?

19 A. 7900 or within right about there.

20 Q. So if you subtract the 7477 you reported to your  
21 bank in August from the 7900 you began the year with how  
22 many dead female breeders did you have?

23 A. That calculates to be about 423, but the 7900  
24 could be a little bit more than that, 7920, but based on  
25 7900 my side it's 423, yes.

1 Q. And 423 dead mink is certainly consistent with  
2 your 400 that you reported dead, is it not?

3 A. Yes.

4 Q. When you were talking with Mr. Minnock you said  
5 there were some other factors that contributed to the  
6 36,000 figure in Exhibit 34, but he didn't give you the  
7 chance to tell us what those factors are. What are  
8 those other factors that contributed to the 36,000  
9 figure in Exhibit 34?

10 A. Based on production or -- I guess I'm -- I can  
11 look at the question -- I can see that question being a  
12 few different questions so --

13 Q. So let me ask it this way: What factors  
14 contributed to that high number of pelt sales and live  
15 sales in 2011?

16 A. Like I was saying earlier, the high production in  
17 Cedar Valley, you know, the extraordinary numbers. We  
18 saw, like I said, anywhere between a quarter kit to  
19 some sheds even half a kit higher than what you would  
20 expect. And talked to a few other ranchers, they seemed  
21 to have comparable averages. So I mean it was just a  
22 really good year, except for in Lehi.

23 Q. And what did you do with the dead mink -- or the  
24 ones that could be pelted, what did you do with those?

25 A. We salvaged most of them. You know, it's not a

1 perfect science, you can't save them all before they --  
2 you know, if they get too hot, if there's any -- if  
3 they've been sitting in the pen too long, so -- but we  
4 would freeze them after we collected them.

5 Q. And sell them as pelts?

6 A. The ones that we could. Even though we collected  
7 them, there could have been a few that we still disposed  
8 of.

9 Q. Now, I asked you on direct examination how many  
10 kits you expected to be produced in 2010, and I think  
11 you estimated about 43,000. Can you go through the math  
12 on that with me?

13 A. That year we had, I believe it was, 5800  
14 mahoganies, so you would times that by a six, I believe  
15 that's about 35,000, and then blacks we had 4100, and so  
16 if you times that by five it would be 10,500, so --

17 Q. That comes out to --

18 A. -- it's probably closer to 45,000 I'm guessing.

19 Q. 45,500 that you would -- expected estimate  
20 expectation in kits produced for 2010.

21 A. Yes.

22 MR. MERCER: No other questions.

23 THE COURT: Anything else?

24 //

25 //

**RECROSS-EXAMINATION**

**BY MR. MINNOCK:**

Q. If you would have gotten those numbers, five black mink per -- or five kits per black mink and six kits from mahogany mink and had the 45,000, it would be far and away the best year you had ever had, right?

A. Looks to be so, yes.

Q. You have never in your history in the last decade had a year where you had six mahogany kits per litter and five black kits per litter, have you?

A. I mean we got those numbers from somewhere, so it's kind of -- it's our estimates as we lead into each whelping season.

Q. The only numbers that you are able to give would be the ones that you gave your bank and the ones you gave to Dr. Roberts, right?

A. If I provided them, then those would be the numbers.

Q. And we looked at those and in no year did you ever get five kits per litter among your blacks, right?

A. It depends on if they're whelping numbers or sale numbers for the averages.

MR. MINNOCK: All right. That's all the questions I have.

MR. MITCHELL: No questions, Your Honor.

1 THE COURT: Thank you, sir. You can step  
2 down.

3 MR. HANCEY: We call as our next witness  
4 Mr. Kent Griffeth.

5 THE COURT: Ladies and gentlemen, the  
6 attorneys have a matter they need to call to the court's  
7 attention, and I'm going to give you an unexpected break  
8 here for just a few minutes. Don't eat all the snacks  
9 that are there, enjoy what you can. We'll take for you  
10 about a ten-minute break. We'll excuse you now for  
11 about ten minutes so that I can resolve some matters  
12 with the lawyers.

13 (Jury outside the presence of open court.)

14 THE COURT: Your witness, have you got him?  
15 Sir, if you will come forward and be sworn please.

16 **KENT GRIFFETH,**  
17 called as a witness at the request of the Plaintiff,  
18 having been first duly sworn, was examined  
19 and testified as follows:

20 THE CLERK: Please take a seat. State your  
21 name and spell your name for the record, please.

22 THE WITNESS: Okay. Kent Barfuss Griffeth.  
23 Do you want me to spell the last name?

24 THE CLERK: Please.

25 THE WITNESS: G-r-i-f-f-e-t-h.



1 MR. MERCER: Your Honor, I need some help on  
2 how to proceed here. I have a number of questions for  
3 this witness that are not objected to.

4 THE COURT: Get into the ones that you think  
5 might be objected to and let's see what there is.

6 **DIRECT EXAMINATION**

7 **BY MR. MERCER:**

8 Q. Good morning Mr. Griffeth. Did you experience  
9 any problems with your mink herd in 2010?

10 A. I did.

11 Q. When did they begin?

12 A. They began during whelping season.

13 Q. About what date?

14 A. Around the 25th, 26th of April.

15 Q. Tell me about those problems.

16 A. I had mink that were having babies at the time,  
17 they just started to develop problems. I had kits  
18 dying, I had mothers dying, I had all sorts of problems  
19 out there. It was not good, it was not normal. I tried  
20 to save some of them. I couldn't save the babies. I  
21 tried to farm them out. All sorts of things happened  
22 that were not normal.

23 Q. Where were you in the whelping process when the  
24 problems began to develop?

25 A. I would guess about 40 percent in when major

1 problems started happening to my mink herd.

2 Q. How were the mink doing that had already whelped?

3 A. They seemed to be doing okay, the ones that had  
4 whelped. I was having problems with the ones coming in  
5 then and then after that were pregnant started having  
6 major problems, not having babies, having them and  
7 losing them and not being able to take care of their  
8 babies, such as that.

9 Q. So pre-2010 what was your normal ranch-wide  
10 litter size?

11 A. My normal size was between a four and five  
12 average.

13 Q. And in 2010 what was your litter average?

14 A. It was under a three.

15 Q. How long did these problems persist?

16 A. They continued on through the rest of the whelp,  
17 and on through the rest of the year I had a lot of  
18 problems with mink dying and not -- that was not normal.

19 MR. MERCER: Your Honor, as I understand  
20 it -- and before that I'm going to lead up to the fact  
21 that he fed the same crumlets that came off the same  
22 truck from the same batch as Mr. Jonsson. And, as I  
23 understand it, that's the testimony that will be  
24 objected to.

25 MR. MITCHELL: There will be additional

1 testimony as well.

2 MR. MERCER: A great deal. I can tell you  
3 I'm going to review with him a little bit about his  
4 background, his mink ranching experience, his other work  
5 experience. He sits on the same feed committee at the  
6 Co-op as the Jonssons, he fed the same feed, and then  
7 I'm going to go into great detail about the testing of  
8 the crumlets.

9 MR. MITCHELL: We're going to have issues  
10 with that as well, but if you're -- we're going to have  
11 issues with the testimony concerning the testing of the  
12 crumlets, but to me it makes sense, if it makes sense to  
13 Your Honor, to deal with the issues concerning  
14 comparison of one ranch to another now.

15 THE COURT: Relating his experience.

16 MR. MITCHELL: Right.

17 THE COURT: Apparently he fed from the same  
18 batch.

19 MR. MITCHELL: He fed from the same batch.

20 **CROSS-EXAMINATION**

21 **BY MR. MITCHELL:**

22 Q. Now, Mr. Griffeth, you don't raise the same  
23 animals that the Jonssons do, do you? You have your own  
24 animals, correct?

25 A. They are my own animals at my ranch, yes.

1           Q.   Your ranch is how far away from the Jonssons'  
2   ranch?

3           A.   Approximately a two and-a-half hour drive.

4           Q.   So I looked at it, it looks like to me like it  
5   was about 150 miles or so, something like that, does  
6   that sound about right?

7           A.   Yes.

8           Q.   And you don't use the same water sources as the  
9   Jonssons do, do you?

10          A.   No.

11          Q.   And you don't use the same feed source that the  
12   Jonssons do, do you?

13          A.   I do. I use the same Co-op feed.

14          Q.   Okay. You use the same Co-op feed. What plant  
15   do you get your feed from?

16          A.   My plant is mixed in Logan.

17          Q.   Your's is mixed in Logan. And where does the  
18   Jonssons' come from?

19          A.   I'm pretty sure theirs is mixed down in Salt  
20   Lake.

21          Q.   Down in Sandy, right?

22          A.   Yes.

23          Q.   Okay. So not the same -- same vendor, but  
24   different plants.

25          A.   Correct.

1 Q. Okay. Now, the -- what else? Do you feed your  
2 crumlets at the same rate as what the Jonssons feed  
3 their crumlets?

4 A. I'm sure it's similar, yes.

5 Q. What rate do you feed your crumlets at?

6 A. I shoot for 30 percent.

7 Q. You shoot for 30 percent. Is that on an as-fed  
8 or dry-matter basis?

9 A. I order 70 percent Co-op feed and I add 30  
10 percent crumlets to my mixture.

11 Q. Is that by weight?

12 A. That's how I do it. I get Co-op feed at  
13 70 percent and I add 30 percent to make a complete feed.

14 Q. Does that mean for every hundred pounds of ration  
15 that you feed 70 is Co-op and 30 pounds is lactation  
16 crumlets?

17 A. Are you talking about water added to it or not?

18 Q. That's why I'm asking if we're talking about --

19 A. I'm telling you I mix 70 percent Co-op feed and  
20 30 percent crumlets.

21 Q. By dry matter or by weight?

22 A. That's what I end up getting is 30 percent  
23 Co-op -- there's 70 percent Co-op feed, 30 percent  
24 crumlets, that's what I shoot for. It's different  
25 everyday because of the weight of the feed that comes.

1 Q. Sure. And so what I'm asking you is when you say  
2 30 percent and 70 percent, is that on a dry matter or an  
3 as-fed basis?

4 MR. MERCER: Objection, asked and answered.

5 THE COURT: He can tell us how he mixes it.  
6 Do you put some water in with the stuff?

7 THE WITNESS: Yes. I mix water with it to  
8 make it a complete feed to add to my mixture, yes.

9 Q. (By Mr. Mitchell) Sure. And so if you have a  
10 hundred pounds of mixture, you've got 70 pounds Co-op  
11 feed and 30 pounds crumlets.

12 A. When I'm done mixing that's what I have, yes, I  
13 have 70 and 30.

14 Q. Okay. That's all I wanted on that one.

15 Now, you haven't had your -- you didn't have  
16 any of your mink necropsied in 2010, did you?

17 A. Yes, I did.

18 Q. You did?

19 A. Yeah.

20 Q. Where did that take place?

21 A. Utah State.

22 Q. When did that take place?

23 A. In the fall.

24 Q. In the fall of 2010. And --

25 A. Yes.

1       Q.   -- why did you send in mink to be necropsied in  
2   the fall of 2010?

3       A.   They were still dying.  I have never had this  
4   problem before and I wanted to find out if I could find  
5   an answer for why.

6       Q.   And did you get an answer from the necropsy at  
7   Utah State in 2010?

8       A.   There was a paper sent out.  I didn't understand  
9   all the language on it, no.

10      Q.   Did anybody give you the gist of what the paper  
11   said?

12      A.   No.  I tried to go up and talk to the guy and I  
13   really didn't understand what he was saying, no.

14      Q.   So you don't have any idea what the results of  
15   the necropsy were in the fall of 2010 from Utah State.

16      A.   Not -- just in general terms.  I didn't  
17   understand any of it, no.

18      Q.   I'm sorry I didn't understand your answer.  Did  
19   you -- do you have any idea what the necropsy results  
20   were in the fall of 2010?

21      A.   They said that they had several problems I  
22   remember seeing in there, but I'm not sure what they all  
23   were.

24      Q.   Okay.  So you don't know if the necropsy showed  
25   that there were any feed-related problems with your

1   mink, or if they were disease-related problems with your  
2   mink.

3       A.   I don't know if they answered it that specific or  
4   not, I don't know.

5       Q.   Okay.   So have you seen any necropsy results  
6   showing that in fact there were feed-related deaths  
7   associated with your mink in 2010?

8       A.   I don't know.

9       Q.   Now, do you have any necropsy showing, for  
10   example, that there were disease-related deaths in your  
11   mink in 2010?

12      A.   Disease, no.

13      Q.   So in 2010 do you have anything which shows a  
14   cause of death for any mink that died during that year?

15      A.   They -- all they did is they made estimates that  
16   this could have happened to that mink.

17      Q.   Who is "they"?

18      A.   The guy that ran the test.

19      Q.   What's his name?

20      A.   I don't know.   I can't remember.

21      Q.   Do you know where he was from?

22      A.   He worked for Utah State.

23      Q.   Do you know what his position was?

24      A.   I guess a lab tech.   I don't know.

25      Q.   Do you know what tests he ran?



1       A.   He ran several tests, and I can't tell you all of  
2   them, no.

3       Q.   So as we sit here today, you fed the crumlets at  
4   a 70/30 rate.

5       A.   Correct.

6       Q.   You don't use the same feed source as what the  
7   Jonsson do.

8       A.   Same diet, but not the same plant.

9       Q.   Not the same plant.  You don't use the same water  
10   source.

11      A.   No.

12      Q.   You're located 150 miles away.

13      A.   Correct.

14      Q.   And we don't know -- we don't have a cause of  
15   death for any of your mink in 2010, correct?

16      A.   As far as I understand, I don't know on that of  
17   the results.

18      Q.   Okay.  So that's the sum total of the information  
19   that we have here today, correct?

20      A.   I don't understand the question.  What are you  
21   asking me?

22      Q.   Is there any other information out there that you  
23   are aware of that ties the lactation crumlets to  
24   anything that went on on your farm that comes from 2010?

25      A.   We have several tests that we've taken, yes.

1 Q. Okay. In 2010 were any tests -- there weren't  
2 any tests done in --

3 A. We started running tests in 2010.

4 Q. Okay. When you say "tests," you're talking about  
5 feed tests, right?

6 A. Yes.

7 Q. Okay. We're talking right now necropsies, okay?

8 A. Okay.

9 Q. Do we have any test results on your animals  
10 showing that there were in fact deaths, feed-related  
11 deaths, on your ranch in 2010?

12 MR. MERCER: Asked and answered.

13 THE COURT: I think that he has indeed  
14 answered that, counselor. Put your next question.

15 MR. MITCHELL: Okay.

16 Q. (By Mr. Mitchell) Do you experience disease on  
17 your ranch from time to time?

18 A. I would say yes.

19 Q. And what types of diseases do you experience on  
20 your ranch?

21 A. Some of the common ones is they might get certain  
22 types of colds or things like that.

23 Q. What about distemper?

24 A. I've never experienced distemper.

25 Q. How about botulism?

1       A.    Never had botulism.

2       Q.    Pseudomonas.

3       A.    I have had a little bit of that, yes.

4       Q.    How about enteritis?

5       A.    A little bit of that too, yes.

6       Q.    How does the disease process, if you know, get  
7    onto your ranch?

8       A.    I don't know.

9       Q.    Do you do anything to control the entry of that  
10   disease process onto your ranch?

11      A.    Yes.  I disinfect all the time.  I make sure the  
12   water supply is good, I make sure the feeders are  
13   cleaned, I make sure that everything that I can possibly  
14   do in that regard is done.

15      Q.    And in spite of that you still experience disease  
16   on your ranch from time to time.

17      A.    It happens, yes.

18      Q.    Sure.  Does that come from, for example, do you  
19   have stray animals that wander onto your property that  
20   might transmit the disease?

21      A.    No.  I have a fence around it, a guard fence, at  
22   all times.

23      Q.    Okay.  So we're just kind of stumped then  
24   figuring how that disease process makes it onto your  
25   ranch.

1       A. I'm sure that it -- from time to time, and I've  
2 never had the animals tested for that, they've showed  
3 symptoms of that, so that's what I'm guessing it was,  
4 and so I took care of the problem.

5       Q. Now, did you -- in 2010 did you have a vet out to  
6 your place?

7       A. I did.

8       Q. When did that happen?

9       A. It was early in the year.

10      Q. How early?

11      A. It was like in -- I'm recalling at the first of  
12 the year I had him come out and check everything because  
13 I needed a certification to sell my mink.

14      Q. After that certification process was completed  
15 did you have a vet out to your place at any other time  
16 during 2010?

17      A. No.

18               THE COURT: I would be interested in the  
19 feed tests.

20               MR. MITCHELL: You would be interested in  
21 the feed tests?

22               THE COURT: He said he had feed tests.

23               MR. MITCHELL: Yeah, we can move into the  
24 feed tests. That gets into the second portion of what  
25 we're going to have to take up.

1           THE COURT: Well, you're dealing with  
2 causation questions here as practical matter, and he's  
3 telling us what he's experienced, and the question then  
4 becomes, well, how do you tie that in with the feed.

5           MR. MITCHELL: Right.

6           So, Mr. Griffeth, you sent out, as I  
7 understand it, several samples of feed for testing.

8           MR. MERCER: Your Honor, if we're moving  
9 into testing, I would like to question first.

10          THE COURT: I'm sure. But I'm interested in  
11 moving things along. How does the testing tie in with  
12 causation? I'm asking you.

13          MR. MERCER: Mr. Kent Griffeth will testify  
14 that a truck came with this load of lactation crumlets.  
15 Six pallets went to Mr. Jonsson, six pallets stayed with  
16 Mr. Kent Griffeth, and four pallets went to Mr. Roger  
17 Griffeth his father. They all fed the lactation  
18 crumlets, all had similar mink deaths. Roger Griffeth  
19 in the hallway, 75 years old, saved one pallet of the  
20 lactation crumlets. He'll give us the reason why he  
21 saved it, but that was the pallet that Mr. Kent Griffeth  
22 drew from when he carefully prepared samples, sent them  
23 off to laboratories, that's Exhibits 16 through 19 are  
24 the laboratory tests of the lactation crumlets that all  
25 three ranches fed to their mink.

1 THE COURT: Okay.

2 MR. MERCER: The causation is the test  
3 results show a high level of -- well, it says what it  
4 says, and our expert will tie those test results to dead  
5 mink.

6 THE COURT: Okay. Tell me your objection.

7 MR. MITCHELL: My objection to which portion  
8 of it, Your Honor?

9 THE COURT: This witness.

10 MR. MITCHELL: Well, there's two objections.  
11 One is they can't show the necessary similarity of  
12 circumstances between his ranch and the Jonsson ranch.

13 THE COURT: Well, skip that. They're  
14 talking about the same feed, aren't they?

15 MR. MITCHELL: They are, but we're also --  
16 but we're not talking about the same feed source. It's  
17 not the only feed that they fed, we're not talking about  
18 the same water source, we're not talking about the same  
19 location, we're not talking about the same disease --

20 THE COURT: You're welcome to put your  
21 experts on to talk about that down the road. I don't  
22 see anything at this point that's objectionable.

23 MR. MITCHELL: Okay. I'm happy to move into  
24 the testing then.

25 THE COURT: Well, no, I'm not going to get

1 into testing. I'm going to get into his testimony. At  
2 this point in time tell me what you object to.

3 MR. MITCHELL: In terms of the testing, Your  
4 Honor, I don't know enough to object. We haven't gone  
5 through and laid any of the foundation to show that the  
6 testing techniques were --

7 THE COURT: Okay. Well, you can make your  
8 appropriate objections during his testimony. We'll have  
9 the jury come on back, and let's get started.

10 Sir, if you'll get down, and we'll at least  
11 indicate to the jury that you're going to be sworn  
12 again.

13 (Jury present in open court.)

14 THE COURT: Again, thank you so much, folks.  
15 Sit down, relax. I appreciate your giving me a chance  
16 to talk with the lawyers.

17 Sir, if you'll be sworn please.

18 **KENT GRIFFETH,**

19 called as a witness at the request of the Plaintiff,  
20 having been first duly sworn, was examined  
21 and testified as follows:

22 THE CLERK: Please take a seat in the  
23 witness stand. State your name for the record.

24 THE WITNESS: My name is Kent Barfuss  
25 Griffeth.

**DIRECT EXAMINATION**

**BY MR. MERCER:**

Q. And tell us your address please, Mr. Griffeth.

A. I live at 2214 South 1600 East, Preston, Idaho.

Q. How long have you lived in Preston, Idaho?

A. All my life.

Q. How old are you?

A. 55.

Q. What do you do for a living?

A. I'm a mink rancher.

Q. When did you start mink ranching?

A. I started with my dad when I was eight years old.

Q. Where is your mink ranch located?

A. At my address.

Q. The same as your home in Preston?

A. Yes.

Q. How long have you had your mink ranch at that location?

A. Over 30 years.

Q. At the start of the 2010 season how large was your mink ranch?

A. Approximately 1700 females.

Q. What other work experience have you had besides mink ranching?

A. I worked for Thiokol Corporation.



1 Q. How long?

2 A. 27 years.

3 Q. What did you do there?

4 A. I was a worker, a main -- not maintenance, sorry,  
5 I worked at several different jobs, but I was basically  
6 a worker out there, a common laborer.

7 Q. What type of things did you labor on?

8 A. I worked on shuttle parts, I worked on defense  
9 systems, things of that nature.

10 Q. I take it you worked at Thiokol at the same time  
11 you were ranching mink?

12 A. I did both, yes.

13 Q. Are you a member of the Fur Breeders Agricultural  
14 Co-op?

15 A. Yes.

16 Q. In 2010 what was the principal source of your  
17 mink feed?

18 A. Co-op feed.

19 Q. How long has the Co-op been the principal source  
20 of your feed?

21 A. Ever since I've been a mink rancher.

22 Q. How do you get your feed from the Co-op?

23 A. It's delivered to me.

24 Q. How often?

25 A. Depending on the time of year everyday or every

1 other day.

2 Q. How is it delivered to you?

3 A. They bring it in a trunk and pump it off onto my  
4 ranch.

5 Q. In 2010 did you consult with anyone about your  
6 mink feed for that year?

7 A. Yes.

8 Q. Who?

9 A. I have a representative at National Feeds called  
10 Al Neuman that I talk to about it.

11 Q. How do you know Al Neuman?

12 A. I've known him for several years as I've  
13 purchased the product.

14 Q. Tell me about your 2010 contact with Al Neuman.

15 A. I met Al Neuman at the fur sale in Seattle, they  
16 had a booth there, and I went out and talked to him and  
17 he showed me some of the literature he had there.

18 Q. Was some of the literature having to do with  
19 lactation crumlets?

20 A. Yes.

21 Q. What did you understand that the lactation  
22 crumlets were supposed to do?

23 A. The lactation crumlets were advertised to be a  
24 superior product to help your mink in every way, and  
25 they had a new product coming out that year that they

1     named Imu-Max that was even supposed to help with this  
2     product even farther.

3           Q.    Can I have you turn to Exhibit 13 please.    I'm  
4     sorry, can I have you turn to Exhibit 12 please.

5           A.    Okay.

6           Q.    What is that?

7           A.    It's a flyer from National Feeds on lactation  
8     crumlets.

9           Q.    Did you see that at the trade show in 2010?

10          A.    Yes.

11          Q.    Did you see that, the bullet points there at the  
12     bottom of the page?

13          A.    Yes.

14          Q.    Can you read those for me?

15          A.    Yes.    It says Reduce kit losses, Lower bacteria,  
16     Improve lactation for better size, Improve kit growth,  
17     Increase level of quality proteins, Minimize female  
18     losses.

19          Q.    In 2010 did you have any discussions with any  
20     representative from National Feeds about National Feeds'  
21     limitation of liability on its products?

22          A.    No.

23          Q.    In 2010 did you have any discussions with any  
24     representatives of National Feeds about National Feeds'  
25     warranty disclaimers on its products?

1           A.    No.

2                       MR. MINNOCK:  Objection, Your Honor.  This  
3 individual isn't even a plaintiff in this case.  His  
4 discussions about the warranty aren't relevant to this  
5 case.

6                       THE COURT:  Well, we ought to move on,  
7 counselor, to the next subject.

8                       MR. MERCER:  Thank you, Your Honor.

9           Q.    (By Mr. Mercer) Did you order any lactation  
10 crumlets?

11          A.    Yes.

12          Q.    How did you order them?

13          A.    I asked Al Neuman to order them, but I didn't  
14 know an amount at that time, and I told him I would call  
15 him later and tell him how much we needed.

16          Q.    Did you call him later?

17          A.    Yes.

18          Q.    And what amount did you give?

19          A.    I ordered six pallets for myself, four pallets  
20 for the Jonssons, and four pallets for my father.

21          Q.    Why did you order for your father and the  
22 Jonssons?

23          A.    We wanted it all to come on a load because it was  
24 cheaper to get it all on one load and we didn't have to  
25 pay any extra trucking.

1 Q. When did you place that order?

2 A. Around the end of March.

3 Q. Of 2010.

4 A. Yes.

5 Q. After the trade show.

6 A. Yes.

7 Q. For what delivery date?

8 A. I asked for around the 15th of April.

9 Q. So it was 40,000 pounds in all, if my math is  
10 correct?

11 A. Yes, I think so.

12 Q. And when did the order actually arrive?

13 A. The 15th of April.

14 Q. The entire order came to your place?

15 A. Yes.

16 Q. Who unloaded the product?

17 A. I unloaded the product.

18 Q. What did you do with the product after you  
19 unloaded it?

20 A. I stored mine in a container that I have there in  
21 a semitrailer. My father came up and immediately  
22 started taking his home. And I stored the Jonssons'  
23 inside a covered building that I have there.

24 Q. How did the Jonssons get theirs?

25 A. Michael Jonsson came up a couple of days later

1 and picked theirs up.

2 Q. Were there any instructions on the lactation  
3 crumlets about refrigeration?

4 A. No.

5 Q. Any expiration date?

6 A. No.

7 Q. Were each of you invoiced separately?

8 A. Yes.

9 Q. What day did you begin feeding the lactation  
10 crumlets?

11 A. I started on the 21st or 22nd of April.

12 Q. And will you explain your mixing procedure.

13 A. Yes. I get 70 percent Co-op feed and I add 30  
14 percent crumlets to make it 100 percent of what I need  
15 to feed my animals.

16 Q. And you have a mixing tank or a mixer at your  
17 place?

18 A. Inside the storage tank that the feed is pumped  
19 in has a mixer inside of it that I can mix.

20 Q. And how much of your ranch did you feed the  
21 crumlets to?

22 A. My entire ranch.

23 Q. Did you experience any problems with your mink  
24 herd in 2010?

25 A. I did.

1 Q. When did they begin?

2 A. They began about the 26th, 27th timeframe I  
3 started to notice problems with my mink.

4 Q. And tell me about the problems.

5 A. The problems were that there all of a sudden  
6 started to be a larger than usual number of deaths in  
7 not only kits but females. I started having mink that  
8 died and I didn't know why. I had mink that had babies  
9 and couldn't take care of them. I was able to farm some  
10 babies out to other litters, but they died also. And it  
11 seemed like from then on I had a lot of problems with  
12 mink coming in having babies or dying before they had  
13 them or dying after they had them with their babies  
14 dying too.

15 Q. Where were you in the whelping process when you  
16 first noticed the problems?

17 A. About 40 to 50 percent in early.

18 Q. Did you notice any particular group of mink on  
19 your ranch that were having the problems?

20 A. It seemed to be the ones that had not come in yet  
21 or the ones that were having them then were the ones  
22 that were having major problems. The ones that had come  
23 in earlier seemed to be doing okay. But the ones that  
24 were whelping then and from then on had major problems.  
25 It was like a train wreck.

1 Q. Help us understand. When you say "the ones that  
2 had come in," what do you mean?

3 A. That's the ones that already had babies and were  
4 actually in the box taking care of them.

5 Q. So by "come in" you mean already whelped or  
6 delivered.

7 A. Yes, sorry.

8 Q. Let's talk about litter size. Pre-2010 what was  
9 your normal ranch-wide litter size?

10 A. Between a four and a five.

11 Q. What happened to your litter size after  
12 April 29th, 2010?

13 A. I believe it was below a three.

14 Q. How long did this problem persist?

15 A. I had major problems through the rest of the  
16 whelp with mink having babies or losing mink or mothers,  
17 and then throughout the rest of the year I had problems  
18 with mink dying.

19 Q. What did you do to determine the cause of your  
20 2010 problems?

21 A. I tried to talk to other ranchers at the time to  
22 see if I was the only one having problems or if other  
23 ranchers were having any problems.

24 Q. What did you determine?

25 A. I talked first of all to my father. He said that



1 he was having some --

2 Q. Without telling me what he said, just tell me  
3 what you determined after these discussions.

4 A. I determined that I was not the only one that was  
5 having problems.

6 Q. Did you ever speak to Ed Buschur from National  
7 Feeds about the problem?

8 A. I did.

9 Q. When did you do that?

10 A. It was a little bit later on in the year.

11 Q. What did you tell him?

12 A. I told him that I had had a lot of problems  
13 out in the mink ranch.

14 Q. And what did he tell you?

15 A. I don't know if he answered us specifically right  
16 then. He just acknowledged that I had problems.

17 Q. Did you ever have the crumlets tested?

18 A. I did.

19 Q. Where did you get the samples that you had  
20 tested?

21 A. My father kept a pallet of feed in his cooler and  
22 he did not feed that and I was able to have samples from  
23 those bags.

24 Q. Where did you send the samples?

25 A. I sent it to a lot of different labs.

1 Q. For what purpose?

2 A. To find out what was wrong with the -- if there  
3 was anything wrong with the feed.

4 Q. What did you send?

5 A. I sent out the samples as directed by the labs  
6 that I called. They told me how to sample it and how  
7 much they needed, and I sent it to them to be tested.

8 Q. How did you prepare the samples that you sent to  
9 the labs?

10 A. I had a bag that I opened up and I would put on a  
11 pair of gloves --

12 Q. A bag of what?

13 A. A bag of lactation crumlets.

14 Q. From your father's ranch.

15 A. Yes, from my father's ranch. I would open that  
16 bag up, I would reach at the top and pull out some, and  
17 then I would try to get to the middle by laying it on  
18 the side and also down towards the bottom and I would  
19 put it in a bag and I would send it off according to how  
20 much they needed.

21 Q. What type of bag?

22 A. Usually it was a sandwich bag that they asked  
23 for.

24 Q. What instrument did you use to take the sample  
25 from the top, middle, and bottom?

1           A.    I had a small cup that I tried to reach in there  
2           and get a scoop out of to make into a bag, a larger  
3           quantity into a bag.

4           Q.    What type of cup?

5           A.    It was a plastic cup.

6           Q.    Clean?

7           A.    Yes.

8           Q.    New?

9           A.    Every time it was new, yeah.

10          Q.    Did you wear gloves?

11          A.    Yes.

12          Q.    What kind of gloves?

13          A.    I have a pair of slip-on disposable gloves, a box  
14          of them.

15          Q.    Did you receive the analyses that you requested  
16          from the labs?

17          A.    Yes.    Every time they answered.

18          Q.    Will you please turn to Exhibit 16.    Do you have  
19          that?

20          A.    Yes.

21          Q.    What is it?

22          A.    It's an analysis from Adamson Analytical  
23          Laboratories.

24          Q.    Is it addressed to you?

25          A.    Yes.

1           Q.   Is this what you received in response to your  
2   request for an analysis of the National Feeds lactation  
3   crumlets?

4           A.   Yes.

5                   MR. MERCER:   I offer Exhibit 16.

6                   MR. MITCHELL:   We object, Your Honor.   He  
7   hasn't laid the proper foundation.

8                   THE COURT:   I didn't hear you.

9                   MR. MITCHELL:   We object, Your Honor, he has  
10   not laid the proper foundation for the admission of the  
11   exhibit or the sampling techniques that were used.

12                   THE COURT:   Well, this is what he got.

13                   MR. MITCHELL:   I'm sorry?

14                   THE COURT:   Apparently this is what he  
15   received.

16                   MR. MITCHELL:   Correct.

17                   THE COURT:   He's told us this is what he  
18   received.

19                   MR. MITCHELL:   Correct.

20                   THE COURT:   I assume you've got an expert  
21   coming down.

22                   MR. MERCER:   Yes, we do, Your Honor.

23                   THE COURT:   All right.   The objection's  
24   overruled.

25                   (Whereupon, Exhibit 16 was received into

1 evidence.)

2 Q. (By Mr. Mercer) Would you please turn to  
3 Exhibit 17, Mr. Griffeth.

4 A. Okay.

5 Q. What is that?

6 A. That's from Surefish Laboratory.

7 Q. Is it addressed to you?

8 A. It is.

9 Q. Is it what you received in response to your  
10 request for an analysis of the National Feeds lactation  
11 crumlets?

12 A. It is.

13 MR. MERCER: I offer Exhibit 17.

14 MR. MITCHELL: Your Honor, Exhibit 17  
15 involves a whole heck of a lot more than just lactation  
16 crumlets. No foundation has been laid for any of the  
17 additional material.

18 THE COURT: All he's saying is this is what  
19 he received. Why have him describe what he sent to  
20 these folks, if it's different from what he's previously  
21 testified to.

22 MR. MERCER: The expert will be connecting  
23 up any deficiencies.

24 THE COURT: My question is, my suggestion is  
25 the samples that he sent to this lab differ from the

1 method that he used to send to the prior lab, he should  
2 tell us about that.

3 Q. (By Mr. Mercer) Mr. Griffeth, did you send  
4 different samples to NSF Surefish than you sent to  
5 Adamson?

6 A. The samples came out of the same bag and I  
7 sampled them the same.

8 Q. Did you ever send fish meal to Surefish?

9 A. I did.

10 Q. Tell me about that.

11 A. I received a bag of fish meal from another  
12 rancher that I wanted to test to see what was in it.

13 Q. Who was the other rancher?

14 A. Duane Weeks was his name.

15 Q. And why were you interested in Duane Weeks' fish  
16 meal?

17 A. I had done some reading and research on mink and  
18 found out that that has been one source of other places  
19 where they've had problems in feed, and he had a hundred  
20 percent of it, where the lactation only has a certain  
21 percentage, I wanted to test the whole thing to see what  
22 it was. And that bag did come from Rangen Feeds.

23 MR. MITCHELL: Objection, Your Honor, lacks  
24 foundation, hearsay.

25 THE COURT: Well, the answer's in.

1 Put your next question.

2 MR. MERCER: I offer Exhibit 17.

3 THE COURT: I'm sorry?

4 MR. MERCER: I offer Exhibit 17.

5 MR. MITCHELL: Same objections, Your Honor,  
6 the foundation hasn't been laid, and relevance, hearsay.

7 THE COURT: The objection's overruled. The  
8 exhibits will be received, subject to being tied in by  
9 the expert.

10 (Whereupon, Exhibit 17 was received into  
11 evidence.)

12 Q. (By Mr. Mercer) Mr. Griffeth, please turn to  
13 Exhibit 18. What is that?

14 A. It's a lab analysis from eurofins.

15 Q. Is it what you received in response to your  
16 request for an analysis of the National Feeds lactation  
17 crumlets?

18 A. It is.

19 MR. MERCER: I offer Exhibit 18.

20 MR. MITCHELL: Same objections, Your Honor.

21 THE COURT: Same result, the objection's  
22 overruled.

23 (Whereupon, Exhibit 18 was received into  
24 evidence.)

25 Q. (By Mr. Mercer) Finally, Mr. -- well, strike

1     that.

2                     Can I have you turn now to Exhibit 22 --  
3     well, no, strike that. Sorry. Will you finally turn --  
4     sorry for my confusion -- finally turn to Exhibit 8,  
5     please. Do you have that?

6             A. Yes.

7             Q. What is it?

8             A. It looks like the minutes from a Co-op feed  
9     committee meeting.

10            Q. On what date?

11            A. 21st of April, 2010.

12            Q. Are you listed as being present at that Co-op  
13     feed committee meeting?

14            A. Yes.

15            Q. Were you present?

16            A. Yes.

17            Q. Can I have you turn to the minutes of the meeting  
18     on the next page held on May 11, 2010, were you at that  
19     meeting?

20            A. Yes, I was.

21            Q. Do you see the paragraph at the end there  
22     starting with Area reports were given?

23            A. Yes.

24            Q. Will you read the first two lines please.

25            A. Area reports were given. Several reported being



1 very happy with the whelp, while a few reported that  
2 their whelping percentage being down, especially in dark  
3 female kits.

4 Q. Actually it says especially in black female --

5 A. Black female kits. Sorry, I read dark.

6 Q. Then turn to the minutes of the meeting from  
7 June 9th, 2010. Were you present at that meeting?

8 A. Yes.

9 Q. Turn to the second page. Do you see there at the  
10 bottom of the first paragraph where it says Overall, do  
11 you see that?

12 A. Yes.

13 Q. Will you read that sentence.

14 A. Overall, most ranchers were very pleased with  
15 their crop of mink and how they were performing this  
16 year.

17 Q. What action have you taken, if any, to address  
18 your 2010 mink losses?

19 MR. MINNOCK: Objection as to relevance.

20 THE COURT: Sustained.

21 MR. MERCER: No questions.

22 THE COURT: Counselor.

23 MR. MINNOCK: Thank you, Your Honor.

24 //

25 //

**CROSS-EXAMINATION**

**BY MR. MINNOCK:**

Q. Good morning Mr. Griffeth.

A. Good morning.

Q. You actually have used the National Feeds lactation crumlets for over a decade, correct?

A. That's correct.

Q. And the lactation crumlets actually cost more per pound than do the Co-op feed, right?

A. Correct.

Q. And the reason that you've used them for over a decade is because you find them to be helpful in your mink-raising practice.

A. They were helpful, yes.

Q. Okay. They were helpful for all of the ten years prior to this year that you've talked about.

A. Yes.

Q. Okay. Now, you talked about how there's no expiration date on the lactation crumlets. When you order your lactation crumlets you order them with the intent to feed them during the lactation period, right?

A. That's when I use them, yes.

Q. You don't order in 2010 a supply in for 2011 or 2012, or 2013, right?

A. I'm sure they don't make them that far in

1 advance.

2 Q. Well, my point is you don't save them. In other  
3 words, you don't order five truckloads in 2010 and keep  
4 them until 2011, '12, or '13, right?

5 A. I don't have the storage facility, no.

6 Q. Right. So you order them and with the plans of  
7 immediately feeding them, right?

8 A. That's what I do on my ranch, yes.

9 Q. Your father keeps them for later in the year, we  
10 heard, which is where the sample came from, right?

11 A. Correct.

12 Q. And that's because he likes to feed them right  
13 before harvesting to put a sheen on them, right?

14 A. You'll have to ask him. I'm sure he saves them  
15 though.

16 Q. Okay. Now, Ed Buschur came to your farm in  
17 August of 2010, you referenced that, remember that?

18 A. He did not come to the farm. We met at a place.

19 Q. You met for dinner.

20 A. Yes.

21 Q. And the reason you were meeting for dinner is  
22 because you had presented to the Co-op earlier that year  
23 that in fact the Co-op should include the crumlets in  
24 everybody's feed as a matter of course, right?

25 A. We talked about that, yes.

1 Q. You presented that to the feed committee.

2 A. Correct.

3 Q. This was Mr. Buschur's way of thanking you for  
4 your consideration at the time.

5 A. He didn't mention that, no.

6 Q. You don't remember him thanking you.

7 A. He did thank me over the phone, but that's not  
8 why he came out. At least that's not what he said.

9 Q. Okay. Now, you talked a little bit about the  
10 testing that you did after this loss in 2010, but during  
11 the period of 2010 you did not consult a veterinarian at  
12 any time.

13 A. I have never had any sick mink before on my  
14 ranch.

15 Q. Okay. But in 2010 when you did discover a  
16 problem with your mink you did not consult a  
17 veterinarian.

18 A. I tried to consult mink ranchers first, and then  
19 the veterinarian is quite busy at that time, and, no,  
20 he, didn't come to my ranch.

21 Q. And no other veterinarian. My point is that  
22 there is no medical record corresponding with the time  
23 period that you had this loss.

24 A. No.

25 Q. And there's no documentation that you've provided

1 to show the decline in production that you had.

2 A. I do have documentation of that, yes.

3 Q. But that's not part of this trial, correct?

4 A. No.

5 Q. Okay. You're close friends with the Jonssons.

6 A. Yes.

7 Q. You guys go fishing in Alaska every year.

8 A. Not every year.

9 Q. But you've gone fishing and you vacation together  
10 occasionally and things of that nature.

11 A. Yes. We're friends, yes.

12 Q. Okay. Now, you conducted several tests on the  
13 mink feed, correct?

14 A. Yes.

15 Q. You've gone over it. In fact, one test -- the  
16 first test that you did, the test that Mr. Mercer went  
17 over with you were for histamines and nitrosamines,  
18 right?

19 A. Correct.

20 Q. And the first test you ever did was at the end of  
21 2010, correct?

22 A. I don't really remember when the first one was.

23 Q. We're finding the exhibit number. Let me show  
24 you what --

25 THE COURT: You're talking about tests he

1 had done.

2 MR. MINNOCK: Had done.

3 Q. (By Mr. Minnock) This is Exhibit Number 40, which  
4 is the first test you had done in December of 2010,  
5 right?

6 A. I'm not sure if that's the first test or not. I  
7 don't remember.

8 Q. Well, the documents that Mr. Mercer went through  
9 with you, if you start at Exhibit 16, Exhibit 16 is in  
10 that book he went over with you, the -- I know we're  
11 coming up on time, Your Honor, and I only have about  
12 three more questions.

13 The first test in Exhibit 16 was indicated  
14 it was done in December of 2011, right?

15 A. Yes.

16 Q. So that was about 18 months after the feed was  
17 fed.

18 A. Okay.

19 Q. The next test you had done, Exhibit 17, was done  
20 July 1st of 2011, so that's a little over a year after  
21 you fed the feed, right?

22 A. Okay.

23 Q. 18 that you were asked about is also in June of  
24 2011, correct?

25 A. Correct.

1 Q. So these were all done a year after the feed was  
2 fed.

3 A. Okay.

4 Q. And this test that you sent in was done in  
5 December of 2010, right?

6 A. That's what it says.

7 Q. And what you asked them to do is see if there  
8 were histamines. It indicated that there was none  
9 detected, is that right, where it says histamines ND?

10 A. Okay.

11 Q. ND, or none detected.

12 A. Right.

13 Q. So the earliest test you had it indicated was not  
14 detected, correct?

15 A. That's what it says.

16 Q. All right. Finally, one other quick thing.  
17 Later in 2010 you purchased 400 mahogany mink from  
18 Mr. Johnson, correct?

19 A. Correct.

20 Q. And those mink actually had a 5.92 kits per  
21 litter in 2011, correct?

22 A. That's what I said, yes.

23 Q. Is that -- I know that's what we talked about in  
24 your deposition. Is that what you still believe?

25 A. Yes.

1 Q. And your ranch normally gets between a four and a  
2 five I think you've indicated.

3 A. Yes, I did.

4 Q. So those mink that you purchased from Mr. Jonsson  
5 actually performed better than your ranch average.

6 A. Correct.

7 MR. MINNOCK: Thank you, sir. That's all  
8 the questions I have for you.

9 THE COURT: Ladies and gentlemen, let me  
10 give you your lunch break. If you'll be kind enough to  
11 report back in at 20 minutes after 1:00 we'll get  
12 started right at 1:30. I've got a couple of things  
13 ahead of that, but I don't think they'll last very long.  
14 So remember what I've told you, don't talk to anybody  
15 about the case. You'll be excused for lunch and we'll  
16 see you back at 20 after 1:00.

17 We'll be in recess in this and other matters  
18 until 1:30, 1:20.

19 (Jury outside the presence of open court.)

20 THE COURT: 1:30.

21 MR. MERCER: Thank you, Your Honor.

22 MR. MINNOCK: Thank you, Your Honor.

23 (Lunch recess.)

24 THE CLERK: Court resumes session.

25 THE COURT: It looks like we're all here,



1 and you go ahead. Let's bring in the jury.

2 (Jury present in open court.)

3 THE COURT: Relax again, folks. The record  
4 will show the jury is present, counsel and the parties.

5 And you may proceed.

6 MR. MITCHELL: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. MITCHELL:**

9 Q. Mr. Griffeth, you don't have any education or  
10 training in the toxicological sampling of feed?

11 A. I've had some training at work where I've sampled  
12 some products.

13 Q. How about sampling feed for toxicological  
14 testing?

15 A. No.

16 Q. Okay. Now, how many sacks of the lactation  
17 crumlets did you use for sampling?

18 A. Two.

19 Q. Two. Would you take a look at your exhibit book  
20 please, and turn to Exhibit Number 16. Are you with me?

21 A. Yes.

22 Q. Okay. When was the sack used -- or, I'm sorry,  
23 when was the sack opened that was used to sample for  
24 document PL002242?

25 A. To my recollection, I think I had opened -- just

1 opened the second bag to sample this.

2 Q. Okay. And when -- what date did you open it on?

3 A. I would guess just before this. I think this is  
4 when I started the second bag.

5 Q. So what date did you send in this sample?

6 A. 12/12 of '11.

7 Q. And you think that this was the first sample from  
8 the second sack.

9 A. That's my recollection, yes.

10 Q. Okay. Now, you talked about the process that you  
11 used to take the sample, and you said you tried to get  
12 some from the top and the middle and then the bottom, if  
13 I remember your testimony correctly; did I understand  
14 that?

15 A. Yes.

16 Q. How did you go about trying to get the feed from  
17 the top?

18 A. First of all, I would reach in and get a little  
19 cupful out of the top.

20 Q. What kind of a cup are we talking about?

21 A. It's a smaller, little small plastic cup.

22 Q. Is it one that you keep around the house and put  
23 in the dishwasher?

24 A. No. I have some throwaway ones, and that's one  
25 of them that I used.

1 Q. Okay. So it's a throwaway cup that you used.

2 A. Yes.

3 Q. Where did that cup come from?

4 A. Out of the package of other cups.

5 Q. Where is that package kept?

6 A. As far as --

7 Q. Physically on your property where do you keep  
8 that package of cups?

9 A. In my office.

10 Q. In your office. Where is your office located?

11 A. It's on my mink ranch.

12 Q. Is it in -- what building is it in?

13 A. It's in a building that's covered with a desk and  
14 a -- I don't understand the question.

15 Q. In other words, is it in one of -- is it part of  
16 one of your mink sheds?

17 A. No, it is not.

18 Q. Is it a standalone building?

19 A. Yes.

20 Q. Okay. So was the feed that you sampled kept in  
21 the building where you kept the cups?

22 A. No.

23 Q. Okay. So you had to go to your office, grab a  
24 cup out of this package. Now, when you sampled the feed  
25 for PL002242 in Exhibit 16 was the package of cups that

1     you grabbed the cup from was it already opened, or did  
2     you open it right then?

3         A.    It was already opened.

4         Q.    It was already opened, okay.    Do you know how  
5     long it had been opened?

6         A.    I do not.

7         Q.    Okay.    Do you know -- are you the only one that  
8     gets cups out of that package?

9         A.    Yes.

10        Q.    Nobody else gets a cup out of those packages.

11        A.    No.

12        Q.    Now, so you go to your office, you get one of the  
13    plastic cups out of the package, and you carry that cup  
14    back to where?

15        A.    Back to where I'm going to do the sampling.

16        Q.    Where is that?

17        A.    I usually pull the bag out and set it on the  
18    table so I have access to it.

19        Q.    Where is the bag kept before you do the sampling?

20        A.    It's kept with my other feed supplies inside of a  
21    semitrailer.

22        Q.    And as I understand it, it's just a plain old  
23    trailer, it could be a reefer, but you don't use it as a  
24    refrigerated --

25        A.    It is a reefer trailer, but I did not operate the

1 reefer at that time.

2 Q. So by the time that you grabbed the sack of feed  
3 for this first test result that we're looking for, how  
4 long had it been in your possession?

5 A. I believe I just went down, I'm not sure the  
6 timeframe, and picked up another bag from my father out  
7 of his cooler.

8 Q. You're not sure when that happened.

9 A. It was -- to my estimation, I would say it was  
10 before I sampled that, I opened the second bag to start  
11 sampling again.

12 Q. I'm sorry, I didn't understand your answer,  
13 sorry.

14 A. I said I thought that I went down and picked up a  
15 bag out of his cooler that stored it there and I brought  
16 it up to my place and started sampling again.

17 Q. Okay. So you brought it back up, you had it in  
18 your trailer, and you got it out of there and brought it  
19 over to -- where is this table located that you did the  
20 sampling?

21 A. It's in my shop.

22 Q. Okay. And what all is in your shop?

23 A. Do you want me to list everything in there, or  
24 what are you looking for?

25 Q. Just a general description of the kinds of things

1     that are in your shop.

2           A.    It's a shop with tables, I have tools in various  
3     areas that I would need to work.  It's just a shop.

4           Q.    What kinds of work do you do in the shop?

5           A.    I'm a mink rancher, I do everything that's  
6     concerned with the mink ranch in that shop as far as  
7     fixing things and getting things done, yes.

8           Q.    So if you have say, for example, some broken  
9     boxes you can bring those in and work on those in there  
10    or broken -- say your feed cart breaks down, you can  
11    bring it in and work on there, those kinds of things,  
12    that's what we're talking about?

13          A.    I probably wouldn't bring the feed cart in.  It  
14    wasn't big enough for that.  But I do have the door --  
15    and I do repair things in there, yes.

16          Q.    Okay.  So we've got the feed coming from your  
17    trailer and bringing it into your shop and you set it  
18    down on a table.  Do you do anything with the table  
19    before you put the feed down on it?

20          A.    I just make sure I have enough room to do the  
21    sampling that I want to do, yes.  I clean it off.

22          Q.    Then so when you put the feed on the table how do  
23    you position the bag on the table?

24          A.    Well, at first, I set it down and take a sample  
25    out of the top, and then I like to kind of tip it

1 sideways so I can reach down inside of it and take the  
2 rest of the samples.

3 Q. So you've got it -- so we're setting it on its  
4 end up like this?

5 A. Uh-huh (affirmative).

6 Q. 50-pound sack?

7 A. Yes, originally it was. I don't know what was in  
8 it at the time.

9 Q. So then we've got -- so we're setting it on its  
10 end, you open up the top?

11 A. If it wasn't want already opened, yes.

12 Q. We're talking about this one right now.

13 A. Okay.

14 Q. PL002242, this is the first sample coming out of  
15 this bag.

16 A. I'm saying I recollect it probably was, yes.

17 Q. So you would have had to open it.

18 A. Okay.

19 Q. How do those bags open? Do you have to cut them  
20 open or do they rip open?

21 A. There's a tab on the top, you can pull the string  
22 out, it will open.

23 Q. Is that how you opened this bag?

24 A. I don't know if I paid attention to how I  
25 opened -- usually that's what I did to dump it in the

1 mixer, so that's probably what I did.

2 Q. Now, you testified earlier that you put on some  
3 gloves.

4 A. Yes.

5 Q. Okay. When did you put on the gloves?

6 A. Usually when I start to handle feed I put on the  
7 gloves.

8 Q. Did you put on the gloves before you went and got  
9 the sack or after?

10 A. It would probably be after when I got the sack  
11 positioned where I wanted it.

12 Q. Did you put the gloves on before you opened the  
13 sack or after?

14 A. I don't know.

15 Q. Okay. And what kind of gloves are we talking  
16 about here?

17 A. You're talking about the plastic throwaway, I  
18 think they're nitrate gloves, or whatever they're  
19 called, they're plastic gloves, throwaway gloves.

20 Q. Okay. So it's like what we would see when you go  
21 to the dentist and they're working in your mouth they  
22 put the gloves on to protect their hands?

23 A. That type of glove a doctor would wear, yes.

24 Q. And where did you get those gloves from?

25 A. Bought them from the store.



1 Q. And how long before you sampled this feed had you  
2 bought those gloves?

3 A. I have no idea.

4 Q. And did you go buy those gloves specifically to  
5 sample the feed in PL002242, or did you already have  
6 them?

7 A. I'm sure -- I've got several pair on hand in  
8 different sizes, so I'm sure I had them on hand.

9 Q. Was the box open or closed when you sampled this  
10 PL002242?

11 A. I don't know.

12 Q. Okay. So you put the gloves on, you've got your  
13 cup, and then you scoop some out of the top.

14 A. Okay.

15 Q. Right?

16 A. Uh-huh (affirmative).

17 Q. Do I have that right?

18 A. Uh-huh (affirmative).

19 Q. Yes?

20 A. Yes.

21 Q. What do you do with the feed that you've got in  
22 the cup?

23 A. I take it over and dump it in a sandwich bag.

24 Q. Into a sandwich bag. And where did that sandwich  
25 bag come from?

1           A.    Out of a box of sandwich bags.

2           Q.    Did you do anything to prep the sandwich bag  
3 before you dumped the feed into it?

4           A.    I don't understand.  What do you mean?

5           Q.    In other words, did you go through and sterilize  
6 the sandwich bag?

7           A.    With what?

8           Q.    Anything.

9           A.    No.  I just pulled the sandwich bag out of the  
10 bag.

11          Q.    How about the cup that you used to scoop it out,  
12 did you go through and sterilize the cup before you  
13 scooped the feed out?

14          A.    I didn't see there was a need since it came out  
15 of a new package.

16          Q.    So the answer is no.

17          A.    No.

18          Q.    And so you get the first scoop out of the top,  
19 you dump it into a sandwich bag.  How big of a sandwich  
20 bag are we walking about?

21          A.    The normal size sandwich bag is all I would say.

22          Q.    Okay.  And so after you get that, do you do more  
23 than one scoop off the top?

24          A.    I take enough -- well, depending on which lab I'm  
25 sending it to how much they need.

1 Q. Okay. And so we're looking at 2242, the Adamson  
2 Analytical Laboratories lab.

3 A. Okay.

4 Q. How much off the top did you send Adamson  
5 Analytical Laboratories?

6 A. To tell you the truth, I don't remember. I  
7 filled up the bag of -- with feed.

8 Q. And can you tell me how many scoops from the top  
9 that were part of the feed that you used to fill up the  
10 bag?

11 A. I was hoping or guessing to go for a third.

12 Q. Okay. And then you say you kind of tipped the  
13 bag over a little bit to try and get down to some of the  
14 lower levels?

15 A. Correct.

16 Q. Okay. And did you actually end up dumping any of  
17 feed out to get down to those lower levels?

18 A. I'm sure some spilled out on the table.

19 Q. Okay. For the stuff that spilled out on the  
20 table what did you do with it?

21 A. I just swept it off and threw it away.

22 Q. And so as you're reaching down into -- tipping  
23 this bag over and reaching down inside of it to get some  
24 out of the middle, how far down into the bag do you  
25 reach?

1 A. I'm hoping approximately halfway.

2 Q. Okay. And how far is that?

3 A. Are you -- I don't understand the question.

4 Q. Show me on your arm how far you stuck your arm  
5 down into the feed sack to get some feed out of the  
6 middle?

7 A. I would say about this far.

8 Q. Right about your elbow.

9 A. No.

10 Q. Or right below your elbow?

11 A. About right there.

12 Q. Okay. So we're looking at, I don't know, maybe  
13 12, 14 inches, something like that?

14 A. Okay.

15 Q. Am I --

16 A. I'm just guessing. I don't know. I didn't look  
17 that close to find out.

18 Q. So how far up your arm does the glove reach?

19 A. The glove is only on -- right to my wrist.

20 Q. Makes it up to your wrist. Okay.

21 So and then how many scoops out of the  
22 middle do you take and add into the sack?

23 A. I tried to do a third again.

24 Q. And then you try to get all the way down to the  
25 bottom. How far over do you have to tip the sack to get

1 all the way down to the bottom to get some samples out  
2 of there?

3 A. I nearly have to lay it down, I'm sure.

4 Q. At that point then, do you have all kinds of feed  
5 spilling out?

6 A. It doesn't really run that much. It's not a  
7 liquid.

8 Q. It's about the consistency of bread crumbs,  
9 right, roughly?

10 A. I wouldn't say bread clums.

11 Q. No?

12 A. No.

13 Q. Bread crumbs.

14 A. Oh, crumbs.

15 Q. Crumbs.

16 A. No, they're bigger than bread crumbs.

17 Q. Maybe sand?

18 A. A lot bigger than sand.

19 Q. A lot bigger than sand. What would you compare  
20 the crumlets to that you were seeing?

21 A. I can't really think of a food right now that  
22 would compare to that. I don't know.

23 Q. So you tip the bag pretty much all the way over  
24 onto its side so you can get down to the bottom. Show  
25 me on your arm how far you had to reach into that sack

1 to get those samples from the bottom.

2 A. I'm -- it's probably about right here.

3 Q. So right below your shoulder.

4 A. Between my shoulder and my elbow, yes.

5 Q. Okay. So we're reaching all the way down in  
6 there, and then do you try to get a third out of there  
7 from the bottom too?

8 A. Yes.

9 Q. Okay. And so when you get it all assembled, how  
10 much -- does it fill the sandwich bag?

11 A. Yeah, good enough to close it, yes.

12 Q. And do you do -- other than just dumping it into  
13 the sandwich bag, do you do anything else, do you try to  
14 blend it or anything like that?

15 A. No.

16 Q. So they're just layered in there the way they got  
17 dumped in there.

18 A. Correct.

19 Q. Okay. Now, as we look at in Exhibit 16 -- before  
20 we move on to the next test, once you were done sampling  
21 for PL002242, what did you do with the sack of feed that  
22 was left?

23 A. I don't understand the question. Where I put it,  
24 or what do you mean?

25 Q. Well, I mean I literally want to know what did

1 you do with the remainder of the feed that was left in  
2 the sack. Did you just roll it -- did you roll up the  
3 top of the sack, did you leave it open, carry it and set  
4 it over somewhere, what did you do with it?

5 A. I put it inside a garbage bag and put it back in  
6 my reefer semitrailer.

7 Q. Okay. Did you close off that garbage sack in any  
8 fashion?

9 A. Just tied the top of it, yes.

10 Q. And how did you tie the top of it?

11 A. Just used the strings on the garbage bag to tie  
12 the top.

13 Q. Synched it up?

14 A. Yeah, I think so.

15 Q. And before you put it into the garbage sack did  
16 you close it off in any fashion, did you close off the  
17 sack of feed in any fashion?

18 A. I'm sure -- what I did is I just shut it up so it  
19 wouldn't leak anymore, or limit as much as possible, and  
20 put it inside the garbage bag.

21 Q. And then you put it back inside your trailer.

22 A. Yes.

23 Q. Okay. Is that the same sack of feed that you  
24 used for sampling some of the other analyses that we  
25 have seen in here so far?

1       A.    That would depend on the date.

2       Q.    Okay.  So anything that would have come after  
3   December 12, 2011, would have come from that same sack.

4       A.    I'm assuming so, yes.

5       Q.    Okay.  Now, if we look at -- if we look at  
6   Exhibit Number 18, and specifically pages 1109 to 1110,  
7   so the last two pages in that --

8       A.    Where are those numbers on here?

9       Q.    Bottom right corners.

10      A.    Okay.

11      Q.    Okay.  Now, as I read it, this is a sample that  
12   was tested in April of 2012; is that how you read --

13      A.    That's correct.

14      Q.    And so this test would have come from that same  
15   sack, correct?

16      A.    Yes.

17      Q.    Okay.  And had any other samples been taken from  
18   that sack between the date of the test that we saw in  
19   Exhibit 16, that being PL002242, and the test that we're  
20   looking at in Exhibit 18 starting at 1109?

21      A.    To tell you the truth, I've sent so many tests I  
22   am not sure.

23      Q.    Okay.  Anything that we are looking at that came  
24   from you that is before December 12, 2011, would have  
25   come from the original sack of feed that you started



1 sampling from, correct?

2 A. That's what I'm assuming, yes.

3 Q. Okay. So then if we look at, for example,  
4 Exhibit Number 17, and the second analysis in that  
5 exhibit, and it's document 1119, see that one?

6 A. Yes.

7 Q. Okay. This one, as I see it, is dated June 27,  
8 2011, so this sample would have come from the original  
9 sack of feed that you were taking samples from to test,  
10 correct?

11 A. As far as I know, yes.

12 Q. So at the time that we see 1119, June 27, 2011,  
13 how long had that sack of feed been opened?

14 A. I don't know.

15 Q. Do you know when you first opened the original  
16 sack of feed you sent in for testing?

17 A. I don't know.

18 Q. Okay. Now, when you were sampling for this  
19 particular test result, were you -- and when I say "this  
20 particular result", I'm talking about 1119, okay -- when  
21 you were sampling for this test result did you do  
22 anything different than the process we've talked about  
23 for the Adamson Laboratories?

24 A. I tried to sample them all the same.

25 Q. Do you recall ever using a process other than

1     what you've already described for us?

2             A.    I tried to do them all the same.

3             Q.    My question to you, though, is do you recall ever  
4     doing anything different.  I know you tried to do them  
5     the same, but do you recall doing anything different  
6     than what you've already described?

7             A.    No.

8             Q.    Okay.  Now, you've already been shown this  
9     blowup.

10            A.    Correct.

11            Q.    Which is, I believe, exhibit number -- I believe  
12     it's 40, yeah, Exhibit Number 40.  Do you have any  
13     knowledge of any earlier feed samples having been sent  
14     in before the date of this test result?

15            A.    I don't remember.

16            Q.    Okay.  So would you have used -- I assume you  
17     would have used the same sampling process that you've  
18     already described.

19            A.    Yes.

20            Q.    Okay.  And what we're looking at here, assuming  
21     that this is the first sample that you sent in, how long  
22     before you sent that sample in had you opened the sack?

23            A.    I don't know.

24            Q.    Okay.  When you received the sack you got it from  
25     your dad, correct?

1       A.    Correct.

2       Q.    Was it opened or closed?

3       A.    Closed.

4       Q.    Okay.  We're just not sure when it was opened.

5       A.    No.

6       Q.    Okay.  After you were done sampling each of the  
7   feed -- each of the quantities of feed out of that first  
8   sack, how did you handle the remainder of the feed so  
9   each -- first, let's just start with the feed sample  
10   that you took in Exhibit 40, once you got done sampling  
11   for Exhibit Number 40, how did you handle the feed sack,  
12   what did you do with it?

13       A.    The sample sack or the regular sack?  I don't  
14   understand.

15       Q.    The remainder of the feed, what did you do with  
16   it?

17       A.    The same thing I did with the rest of them, I put  
18   it in a plastic bag.

19       Q.    Put it in a plastic bag and put it back in your  
20   trailer?

21       A.    Yes.

22       Q.    And that's where it stayed until you needed to  
23   get it out and take more samples to send in to other  
24   laboratories.

25       A.    Yes.

1 Q. Okay. There are a few test results in here  
2 dealing with fish meal. I don't see any designation on  
3 here for the type of fish meal that we're looking at.  
4 Do you? So, for example, take a look at Exhibit Number  
5 17, and specifically page 1118.

6 A. I don't know what type of fish meal that is.

7 Q. So we don't -- we just don't know.

8 A. I do -- it came in a bag.

9 Q. It came in a bag, but we don't know the type of  
10 fish meal that it is, so we don't know if it's sardine,  
11 we don't know if it's catfish, or menhaden, or a blend  
12 of fish meal.

13 A. Excuse me, it did have a tag on the inside that  
14 said sardine on it.

15 Q. Okay. Sardine fish meal. And do you know when  
16 that bag of fish meal was produced?

17 A. It was produced around the same time the  
18 lactation feed was delivered to us.

19 Q. It was produced. And how do you know that?

20 A. From the rancher I got it from.

21 Q. Okay. So we're not going to go any further with  
22 that because that gets into hearsay.

23 Okay. Now, let's talk a little bit about  
24 your facility. Your facility is actually located in  
25 Idaho.

1 A. Correct.

2 Q. As opposed to Utah, correct?

3 A. Correct.

4 Q. Okay. And it's -- I think you said it's roughly,  
5 I don't know, two and-a-half hours from the Jonssons'  
6 place?

7 A. Correct.

8 Q. Now, you both get your feed from Fur Breeders,  
9 but you get your feed from the Logan plant.

10 A. Correct.

11 Q. And they get their feed from the Sandy plant.

12 A. Correct.

13 Q. Okay. You each run your own separate herds.

14 A. Correct.

15 Q. You don't commingle them or anything like that,  
16 right?

17 A. No. We run our own ranches.

18 Q. And you use a different water source than what  
19 the Jonssons do.

20 A. Correct.

21 Q. And, in fact, I know you've talked about in the  
22 past you really strive to eliminate any disease  
23 processes or potential for disease on your ranch, but  
24 they do creep in from time to time. I think you've  
25 mentioned pseudomonas showing up from time to time on

1 your ranch.

2 A. Correct.

3 Q. And I think you've described something that  
4 looked kind of like a cold, something like that, on your  
5 ranch from time to time.

6 A. That's pseudomonas.

7 Q. Oh, that's pseudomonas, okay, so kind of one in  
8 the same thing. You've never been able to figure out,  
9 despite your best efforts, how your mink contract  
10 disease, correct?

11 A. I'm sure it's just like humans, it comes around.

12 Q. It comes around.

13 Okay. Now, when all of these mink were  
14 dying in 2010, so late April/May 2010, you never called  
15 a vet out to your place, did you?

16 A. Truthfully, the vet that we had is a Co-op vet  
17 that's in Salt Lake and he is hard to get available at  
18 that time because of his age and his health.

19 Q. So your answer's no, you never called a vet out  
20 to your place, correct?

21 A. No.

22 Q. So for all of these mink that are dying, you  
23 didn't send in any of these mink from April or May or  
24 June to have necropsies done on them, did you?

25 A. No.

1                   MR. MITCHELL: Those are all the questions I  
2 have. Thank you.

3                   **REDIRECT EXAMINATION**

4                   **BY MR. MERCER:**

5                   Q. Just a couple of questions, Mr. Griffeth. You  
6 told Mr. Minnock that you purchased some mahogany mink  
7 from Keith Jonsson; is that right?

8                   A. That's correct.

9                   Q. Do you know which of Keith Jonsson's ranches  
10 those mahogany mink came from?

11                  A. That came from the Cedar Valley ranch.

12                  Q. And you mentioned that you got this truckload of  
13 pallets of lactation crumlets. Tell me again how they  
14 were distributed among you and Roger and Keith.

15                  A. Yes. The Jonssons took six pallets, my father  
16 took four pallets, and I kept six pallets.

17                  Q. On the bag of fish meal that you sent in for  
18 testing what was the name on the bag of fish meal?

19                  A. It said Rangen on it.

20                  Q. Did you receive any sample instructions from the  
21 labs when you called them?

22                  A. Yes.

23                  Q. Did you follow those instructions?

24                  A. Yes.

25                  MR. MERCER: No other questions.

1 MR. MINNOCK: Nothing else, Your Honor.

2 THE COURT: Thank you, sir.

3 MR. MERCER: May this witness be excused,  
4 Your Honor?

5 THE COURT: Any reason why we shouldn't  
6 excuse him?

7 MR. MITCHELL: Yes, Your Honor, he should be  
8 excused.

9 THE COURT: Your next witness.

10 MR. HANCEY: Yes, Your Honor. We call Roger  
11 Griffeth. I'll go get him in the hall.

12 THE COURT: Okay. If you'll come forward  
13 please and be sworn.

14 **ROGER GRIFFETH,**

15 called as a witness at the request of the Plaintiff,

16 having been first duly sworn, was examined

17 and testified as follows:

18 THE CLERK: If you'll please take a seat in  
19 the witness stand. State your name and spell your name  
20 for the record please.

21 **DIRECT EXAMINATION**

22 **BY MR. MERCER:**

23 Q. Would you state your name please, Mr. Griffeth.

24 A. Roger Kohling Griffeth.

25 MR. MERCER: Does he need to spell that did



1     you say?

2                     THE CLERK:   Yes, please.

3             Q.    (By Mr. Mercer) Can you spell your name please.

4     How about spell Griffeth.

5             A.    Griffeth, G-r-i-f-f-e-t-h.   The Kohling is  
6     spelled K-o-h-l-i-n-g.

7             Q.    Roger the usual way?

8             A.    Yes.

9             Q.    Can you state your address please.

10            A.    38 West Main, Franklin, Idaho.

11            Q.    How long have you lived in Franklin, Idaho?

12            A.    55 years.

13            Q.    Hold are you?

14            A.    75.

15            Q.    Is Kent Griffeth your son?

16            A.    Yes.

17            Q.    Are you a mink rancher?

18            A.    Yes.

19            Q.    How long have you been a mink rancher?

20            A.    45 years.

21            Q.    Where is your mink ranch?

22            A.    At our home address.

23            Q.    Is that the only place you've ranched mink?

24            A.    Yes.

25            Q.    How large was your mink ranch in 2010?

1 A. 700 females.

2 Q. Do you have any degrees?

3 A. Yes.

4 Q. What are they?

5 A. I attended Ricks College for two years, graduated  
6 from there, then went to Utah State University. My  
7 major there was geology, minor math, physics, and  
8 chemistry. I got a job at Thiokol and furthered my  
9 training there, was sent to schools to learn to operate  
10 scanning electron microscopes, energy disbursing  
11 analysis of x-ray equipment, and also to ASM where I had  
12 degrees in metallurgy, high temperature metallurgy, and  
13 heat training. Following that I attended George  
14 Washington College in Maryland where I got a degree in  
15 pyrotechnics.

16 Q. Have you had employment elsewhere other than mink  
17 ranching?

18 A. Yes.

19 Q. Where?

20 A. Thiokol Chemical Corporation and Fireworks West  
21 International.

22 Q. How long at each place?

23 A. 33 years at Thiokol, 10 years at the fireworks  
24 company.

25 Q. What was your title at Morton Thiokol?

1       A.    Senior engineer.

2       Q.    In 2010 were you a member of the Fur Breeders  
3   Agricultural Co-op?

4       A.    Yes.

5       Q.    In 2010 what was the principal source of your  
6   mink feed?

7       A.    Fur Breeders Agricultural Cooperative.

8       Q.    Did you add anything else to your mink feed in  
9   2010?

10      A.    Yes.

11      Q.    What?

12      A.    Crumlets produced by National.

13      Q.    What type of crumlets?

14      A.    They were the lactation crumlets.

15      Q.    How did you order the lactation crumlets from  
16   National Feeds?

17      A.    They were ordered through my son, Kent.

18      Q.    Where were they delivered?

19      A.    To his mink ranch.

20      Q.    How did you get yours?

21      A.    I brought them home from there in my truck.

22      Q.    How far is your ranch from Kent's ranch?

23      A.    Three miles.

24      Q.    How many pallets of lactation crumlets did you  
25   pick up from Kent's place?

1 A. Four.

2 Q. Do you know how many pounds that is?

3 A. That would be 8,000 pounds.

4 Q. Where did you store the crumlets when you took  
5 them to your ranch?

6 A. Three pallets were put into a building, metal  
7 building, cement floor, frame structure covered with  
8 metal that's ventilated.

9 Q. How large is that building?

10 A. 25 feet by 35 feet.

11 Q. And what did you do with the fourth pallet?

12 A. It was put into a cooler.

13 Q. Why?

14 A. Well, in the past I have discovered that by  
15 saving that pallet and feeding it just before harvest  
16 time that it put a few beautiful finish to the fur of  
17 the mink.

18 Q. What is the temperature of the cooler?

19 A. It's held at a constant 40 degrees.

20 Q. How do you know that?

21 A. I have a large thermometer there on the wall, and  
22 every time I go in the door it's just right there in  
23 front of me, so I check it every day.

24 Q. When did you feed that last pallet of lactation  
25 crumlets?

1 A. I have not fed it.

2 Q. Did you feed any part of it?

3 A. No.

4 Q. Where is it now?

5 A. It's still right there except for two bags.

6 Q. Where are those two bags?

7 A. I gave them to my son, Kent.

8 Q. When did you start feeding the lactation crumlets  
9 to your mink in 2010?

10 A. It would have been April, about the 27th.

11 Q. What ratio of feed to crumlets did you use?

12 A. 20 percent.

13 Q. How much of the three pallets did you feed?

14 A. All of it.

15 Q. Did you feed the mixture to your entire ranch?

16 A. Yes.

17 Q. Did you have any problems with your mink ranch --  
18 your mink on your ranch in 2010?

19 A. Yes.

20 Q. What problems?

21 A. Well, mink normally start whelping around the  
22 19th of April. On about the 25th, 26th, 27th, along in  
23 there, the females became very -- they were not active.  
24 We have just a little mom and pop operation there, and  
25 we sometimes even name some of our mink. But the

1 females had no energy, they were sick, the kits were  
2 sick, whimpering, and then dying.

3 Q. Is it a particular group of mink that were having  
4 the problems?

5 A. No, it was through the whole ranch.

6 Q. Can you quantify the mortality rate that year?

7 A. Well, we normally in females would lose perhaps 4  
8 percent, it would have been three times that number, or  
9 about 12 percent on females.

10 Q. How about the kits?

11 A. Again, we normally lose about 4 percent of the  
12 new whelped ones, and again it was about three  
13 percent -- three times greater losses.

14 MR. MERCER: No other questions.

15 **CROSS-EXAMINATION**

16 **BY MR. MINNOCK:**

17 Q. Good afternoon Mr. Griffeth. How are you today?  
18 You've been feeding the lactation crumlets for about a  
19 decade, right?

20 A. Yes, sir.

21 Q. And you talked about some of the reasons that you  
22 do it is because you keep one pallet for the end of the  
23 year to provide a nice finish.

24 A. Now, I'm having a hard time hearing you, I'm  
25 sorry.

1 Q. My apologies. Sometimes I need to keep my voice  
2 up. You said that one of the reasons that you keep the  
3 pallet is in order to put this fine finish on them at  
4 the end of the year.

5 A. Yes.

6 Q. But you also use them during the lactation period  
7 because you have found that it has been helpful for your  
8 herd over the last decade, correct?

9 A. Yes.

10 Q. Now, you talked with Mr. Mercer about some  
11 problems that you had in 2010, but during that time  
12 period you did not call a veterinarian to come and  
13 diagnose the problem, correct?

14 A. Now, Mr. Mercer I --

15 Q. He asked you a question about the problems that  
16 you had. During 2010 you didn't have a veterinarian  
17 come to your farm to determine what the problem was.

18 A. No.

19 Q. And you didn't send any mink in to be examined at  
20 Utah State during 2010.

21 A. I don't remember.

22 Q. Okay. During the following year, though, you do  
23 remember that you did open up one mink yourself to  
24 determine that she had died during childbirth, do you  
25 remember that?

1 A. Yes.

2 Q. And when you opened it up you saw signs that you  
3 recognized as infection.

4 A. Yes.

5 Q. Okay. And then you did send some in for -- to be  
6 examined at Utah State.

7 A. Yes.

8 Q. And the results that were given to you were that  
9 those animals died from an infection and possible signs  
10 of Aleutian disease.

11 A. Yes.

12 Q. During 2010 you purchased I think about 200  
13 female mink from Mr. Jonsson, correct?

14 A. Yes.

15 Q. And they were mahogany mink.

16 A. Yes.

17 Q. And you paid I think you calculated that at about  
18 \$93.47 per mink, correct?

19 A. Yes.

20 MR. MINNOCK: Thank you, sir. That's all  
21 the questions I have for you.

22 THE COURT: Anything else?

23 **CROSS-EXAMINATION**

24 **BY MR. MITCHELL:**

25 Q. Mr. Griffeth, do you get your feed from the same



1 place, the same plant that your son gets it?

2 A. Yes.

3 Q. Okay. And do you share a water source with him  
4 or do you each have your own separate water source?

5 A. We're three miles apart. We have our own  
6 systems.

7 Q. So you're close but not that close, physically  
8 geographically you're close but not that close.

9 A. No.

10 Q. Do you visit his facility from time to time  
11 during the year?

12 A. We do.

13 Q. Okay. Does he visit yours?

14 A. From time to time.

15 MR. MITCHELL: No other questions. Thank  
16 you.

17 MR. MERCER: No questions, Your Honor. May  
18 this witness be excused?

19 THE COURT: Thank you, sir, and you may be  
20 excused.

21 THE WITNESS: Thank you, Your Honor.

22 MR. HANCEY: Your Honor, we call as our next  
23 witness Dr. Jeffery Hall.

24 THE COURT: Sir, if you'll come forward to  
25 be sworn. If you'll be sworn, please.

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**JEFFERY HALL,**

called as a witness at the request of the Plaintiff,  
having been first duly sworn, was examined  
and testified as follows:

THE CLERK: Please take a seat. State your  
name and spell your name for the record, please.

THE WITNESS: My name is Dr. Jeffery,  
J-e-f-f-e-r-y, middle name Owen, O-w-e-n, last name  
Hall, H-a-l-l.

**DIRECT EXAMINATION**

**BY MR. HANCEY:**

Q. Good afternoon Dr. Hall. Can you tell the jury  
where you grew up?

A. I grew up on a cattle ranch in southern Oklahoma,  
a little town called Cement, Oklahoma.

Q. Where do you currently reside?

A. I reside in Wellsville, Utah.

Q. What brought you to Utah?

A. In a roundabout trip I continued my education,  
and upon looking for a full-time job was offered three  
different jobs, one of which included a teaching, a  
research, and a diagnostic component, and since that's  
what I was looking for, I opted to take the job at Utah  
State.

Q. How long have you lived in Utah?

1       A.    I took the job at the university in October of  
2    '96.

3       Q.    Are you married?

4       A.    Yes, I am.

5       Q.    Do you have children?

6       A.    I have three stepchildren.

7       Q.    And what are their ages?

8       A.    Let me see, Monica is 30, Justin's 34, and I  
9    think Beth Anne and is 37.

10      Q.    Who is your current employer, Dr. Hall?

11      A.    Utah State University.

12      Q.    What is your occupation or job title there?

13      A.    I'm the head of Veterinary Diagnostic Toxicology  
14    at the Utah Veterinary Diagnostic Lab and a full  
15    professor with Utah State University.

16      Q.    What is veterinary toxicology?

17      A.    Veterinary toxicology is just a veterinary branch  
18    of the overall occupation of toxicology, and toxicology  
19    is the study and treatment of poisons.

20      Q.    So is a veterinary toxicology dealing with the  
21    way that toxic substances affect animals?

22      A.    Yes, it is.

23      Q.    How long have you worked at Utah State?    You  
24    might have already answered that.

25      A.    Since October of 1996.

1 Q. And how long have you been a full professor  
2 there?

3 A. For five years now.

4 Q. What are you a professor in, or a professor of?

5 A. I'm a full professor in the Animal Dairy and  
6 Veterinary Sciences Department of Utah State University.

7 Q. What do your jobs responsibilities at Utah State  
8 currently consist of?

9 A. I have a three-way split appointment. My  
10 appointment is 55 percent as the head of diagnostic  
11 toxicology at the state veterinary lab, I have a 25  
12 percent research appointment, and a 15 percent teaching  
13 appointment, and then my last 5 percent is what they  
14 call university service for all the committees that I  
15 sit on.

16 Q. Just briefly describe your responsibilities in  
17 each one of those three categories you mentioned.

18 A. I'll start with the smallest percentage. My  
19 university service, I sit on a number of committees,  
20 promotion and tenure committees, I sit on the entire  
21 University Animal Use and Care Committee, I also serve  
22 on a variety of post-tenure review committees for the  
23 university, I serve as a reviewer for a number of  
24 research journals, both national and international, I  
25 serve as -- occasionally serve as officer in some of the

1 scientific organizations that I belong to as well. That  
2 covers my 5 percent university service.

3 My teaching component is 15 percent. I am  
4 the instructor of record for the ADVS 5350/6350 class,  
5 which is introductory pharmacology and pharmacokinetics  
6 class. I also assist teaching the toxicology seminar  
7 series.

8 Q. What about the other two components of your work  
9 there?

10 A. My 25 percent research appointment, I'm a  
11 collaborative scientist with a wide variety of  
12 researchers at Utah State University, at other  
13 universities. I am -- I obtain grant money to perform  
14 the research. I have graduate students that help me  
15 conduct research. Before the economy crashed I had a  
16 full-time technician that helped me with the research as  
17 well, but that went away when the budget got cut. I am  
18 asked and required by the university to produce output  
19 from the research, which includes publications, speaking  
20 engagements at scientific meetings.

21 And then my 55 percent diagnostic  
22 appointment I am in charge of all samples that come into  
23 the diagnostic lab that require some type of analytical  
24 testing for toxicology. I handle a lot of phone calls  
25 from producers, from veterinarians, from regulatory

1 officials on these types of cases. I have to  
2 coordinate. My two analytical chemists actually do the  
3 testing that is required that we have the capability of  
4 doing within our laboratory, then I have to write  
5 summary reports on every case that comes through the  
6 lab.

7 Q. What was your prior place of employment?

8 A. Actually I've held three positions at Utah State  
9 University. I came in as an assistant professor, was  
10 then advanced to an associate professor, and then  
11 advanced to a full professor five years ago.

12 Prior to that I was at the University of  
13 Illinois. I was the assistant director of the Animal  
14 Poison Control Center at the University of Illinois  
15 College of Veterinary Medicine and held an assistantship  
16 as well as the full-time position at the Poison Control  
17 Center at the same time I was working on my PhD.

18 Q. Give the jury a little bit of an idea of what  
19 your responsibilities entailed at the Animal Poison  
20 Control Center in Illinois.

21 A. When I first started there basically it's a  
22 matter of answering phone calls. We would get calls  
23 from all over the United States, from the general  
24 public, from veterinarians, from regulatory officials.  
25 We would even get calls from human poison control

1 centers to see if we had any data that they didn't have.  
2 We would deal with cases, we would have to be able to  
3 take history to find out what type of animals were  
4 involved, what potential exposures may have occurred.  
5 In some cases there was no known exposure and you had to  
6 deal with the clinical signs the animal is showing and  
7 things that the veterinarians had been able to test and  
8 get you some information on to try to paint a picture of  
9 what exactly was going on.

10 As I progressed through the system I  
11 actually became the lead resident at the Poison Control  
12 Center and trained all the new incoming toxicologists on  
13 handling calls, progressed to the point to where I was  
14 actually a full-time employee at the same time I was  
15 working on my PhD, and I did training, supervised phone  
16 calls, reviewed cases on an everyday basis. When I  
17 would get done at 5:00, then I would go back to my  
18 research lab and work until midnight or 1:00 in the  
19 morning on my PhD work.

20 The last year that I was there we had just  
21 shy of 50,000 cases come through the Poison Control  
22 Center in a single year.

23 Q. Do you believe your work experience is helpful in  
24 a case like this?

25 A. All background and work experience in the

1     veterinary sciences helps you with a case like this  
2     because you have to be able to weed out what is  
3     important, what is not important, and look at the facts  
4     that are presented to you and be able to come to a  
5     reasonable conclusion as to what was happening.

6         Q.    What is your educational background, Dr. Hall?

7         A.    I received my undergraduate degree from Oklahoma  
8     State University in farm and ranch management under  
9     agricultural economics, then went on to veterinary  
10    school at Oklahoma State University, finished my  
11    veterinary degree in 1987.  Then I went to the  
12    University of Illinois, did a one-year internship, then  
13    a three-year residency, passed the international  
14    toxicology board exams -- veterinary toxicology board  
15    exams, and then finished my PhD at the University of  
16    Illinois.

17        Q.    Your PhD is in what?

18        A.    Investigational forensic toxicology.

19        Q.    What certificates or licenses do you hold?

20        A.    I am currently a licensed veterinarian in the  
21    State of Oklahoma, maintained my Oklahoma veterinary  
22    license after graduation, and I'm also board certified  
23    in veterinary toxicology.

24        Q.    Has your background in diagnostic toxicology ever  
25    led you to reach a novel finding?



1       A. Well, my background and experience I've worked on  
2 a lot of different things. When I was actually at the  
3 Poison Control Center I was actually the first person in  
4 the world to ever investigate and then subsequently  
5 prove and publish that Easter Lily is a toxic plant  
6 because all the literature at that time said that it was  
7 not. And that has since been established as a well  
8 known fact in the veterinary profession that that  
9 particular plant is exquisitely dangerous to cats.

10       Q. I'm almost done with your background here. Have  
11 you done any teaching or lecturing in the field of  
12 veterinary toxicology?

13       A. I do teaching and lecturing every year. Just as  
14 an example, last year I did 26 invited speaking  
15 engagements across the United States. Probably  
16 20 percent, maybe 25 percent of those were at veterinary  
17 institutions or other associations where I was actually  
18 training veterinarians and doing continuing education  
19 meetings.

20       Q. Have you published any articles in the fields of  
21 veterinary medicine, toxicology, or veterinary  
22 toxicology?

23       A. I have published in excess of 80 peer reviewed  
24 journal articles in my career. I have published, I  
25 don't know exact numbers, but probably in excess of 30

1 book chapters. Some of those are directly related to  
2 toxicology, some of those are related to other fields.

3 Q. Now, Dr. Hall, are you familiar with the facts of  
4 this case?

5 A. Yes, sir, I am.

6 Q. Okay. Please explain to the jury what you were  
7 asked to do in this case.

8 A. When I was originally contacted in this case I  
9 was asked if I would serve as a consultant to review  
10 documents to try to help determine what was happening  
11 with an issue of some mink health and mink mortality.

12 Q. Mink belonging to who?

13 A. Actually when I was first contacted it was -- I  
14 was contacted and asked to serve as a consultant for  
15 four different individuals, Kent Griffeth, Mr. Jonsson,  
16 Mr. Jonsson, and the other Mr. Griffeth, and I forget  
17 his first name at this point.

18 Q. What information did you review to try to  
19 accomplish what you were asked to do?

20 A. I asked that I be provided with all documents  
21 available. I was provided a trove of testing reports, I  
22 was provided a number of different depositions from a  
23 number of different individuals, and I think that was  
24 mostly what I was provided initially.

25 Q. Did you interview the Jonssons during your

1 investigation?

2 A. I visited with the Jonssons I believe one time.  
3 I think it was just one time that we actually visited.

4 Q. Did you make any recommendations during your  
5 investigative period?

6 A. I did. I felt like there was some additional  
7 testing that needed to be done because at the time I did  
8 not believe that what had been initially identified as  
9 the potential problem was the true cause.

10 Q. Now, are the kinds of things that you've just  
11 talked about the types of materials information that  
12 experts in your field normally rely on?

13 A. Actually that's only a part of what you have to  
14 rely on. You have to rely on the pertinent facts that  
15 are presented to you, but you also have to rely on the  
16 scientific literature, investigations that have been  
17 done regarding various toxic substances to try to  
18 determine whether that fits with what's being seen on a  
19 clinical basis, see if that fits with what's being seen  
20 as far as an exposure. And so you have to rely on a lot  
21 of literature as well as the pertinent facts that are  
22 presented to you.

23 Q. After you had the chance to look over all the  
24 information that you were presented in this case were  
25 you able to reach a conclusion as to what happened to

1 the Jonssons' mink?

2 A. Yes, sir, I was.

3 Q. Do you have an opinion, sir, with a reasonable  
4 degree of scientific certainty, about what caused the  
5 Jonssons' mink at the Lehi Ranch to get sick and die?

6 A. Yes, sir, I do.

7 Q. What is your opinion?

8 A. It is my opinion, within a reasonable degree of  
9 scientific certainty, that the lactation crumlets that  
10 were fed to the Jonssons' mink contained toxic substance  
11 and substances that potentially adversely affected the  
12 health of the mink resulting in increased neonatal  
13 mortality within the mink kits.

14 Q. Do you have any other facts upon which you relied  
15 to reach that conclusion?

16 A. Well, the clinical picture that was described to  
17 me, you have to take that into consideration, but there  
18 was another very important fact that was presented to me  
19 that I think is very crucial. Me, as a researcher, when  
20 I set up a research study, I want to have controls, I  
21 want to have a population of animals that are not  
22 exposed to something as a direct comparison to a group  
23 of animals that are exposed to something. That's the  
24 only way you can truly compare and determine whether a  
25 population is affected or not. The fact that the

1 Jonssons had two properties, only one of which were fed  
2 the lactation crumlets, and then the other parties that  
3 also were feeding the lactation crumlets from the same  
4 supply, we had three locations where the lactation  
5 crumlets in question were being fed and one location  
6 where they were not, and the clinical syndrome that was  
7 described to me was described as only occurring at the  
8 three locations where the lactation crumlets occurred,  
9 which basically provided a true control just like you  
10 would set up in a research study.

11 Q. Now, you mentioned as part of your opinion that  
12 there are toxic substances in the lactation crumlets  
13 that caused the mink to get sick and die. What are  
14 those substances you were referring to?

15 A. The substance that were identified is -- in the  
16 documentation of the analytical testing there was  
17 identified concentrations of histamine in the lactation  
18 crumlets that were at concentrations high enough to  
19 adversely affect mink. Also within the lactation  
20 crumlets there was identified nitrosamines, a toxic  
21 substance that mink are exquisitely sensitive to, and  
22 those concentrations were deemed to be of a  
23 concentration high enough to produce adverse health  
24 effects in the mink as well.

25 Q. When you were first asked to investigate the

1 facts of this particular case, Dr. Hall, were  
2 nitrosamines one of the substances that had been tested  
3 for in the crumlets?

4 A. No, sir.

5 Q. Who made that suggestion to test for  
6 nitrosamines?

7 A. I did, sir.

8 Q. Why did you make that suggestion?

9 A. There was some testing that had been done that  
10 had identified high concentrations of nitrites in the  
11 lactation crumlets and a fish meal that was tested at  
12 the same time. Nitrites in the presence of biogenic  
13 amine compounds which occur readily in fish can be  
14 chemically converted into nitrosamines, and that's one  
15 of the reasons nitrites are typically not used as  
16 preserving agents for feeds, foods, and things of that  
17 nature anymore is because of the potential for this  
18 development of toxic substances.

19 Q. Okay. Now, can you describe for the jury what  
20 nitrosamines are.

21 A. Nitrosamines are a very large chemical class of  
22 compounds that contain generally one or two side chain  
23 nitrogens as well as side chain small carbon groups. It  
24 is a large class. There are well over 200 different  
25 nitrosamines that have been identified to date. The big

1 reason that they are of concern is because they have a  
2 high potential for development of cancer.

3 Q. How do nitrosamines form from nitrites?

4 A. Biogenic amines in foods materials in the  
5 presence of nitrites and in an acid environment  
6 basically can spontaneously, to some degree, but  
7 increased with temperature, so as you heat or cook, that  
8 combination, that it results in the formation of  
9 nitrosamines. A good example of that is bacons used to  
10 be preserved with nitrites and it was found that bacon  
11 preserved with nitrites in the cooking process form  
12 concentrations of nitrosamines that are potentially  
13 dangerous. And so that heating process, as well as the  
14 chemicals being present that heat provides the energy  
15 necessary for the chemical reaction for the formation.

16 Q. You might have already answered this, but for  
17 clarity sake, what exactly are nitrites that form into  
18 nitrosamines?

19 A. Nitrites are just a nitrogen molecule with oxygen  
20 components that is a chemical form of nitrogen.  
21 Nitrites, and one of the reasons nitrites are used -- or  
22 historically have been used as preserving agents is  
23 because they can inhibit bacterial growth to a degree,  
24 and so nitrites are basically a very small molecule that  
25 happen to have the benefit of inhibiting bacterial

1 growth, so they started using it as a preserving agent  
2 long ago.

3 Q. You may have just answered my next question, but  
4 my question is what commercial uses do nitrites have?

5 A. Nitrites -- there's a variety of commercial uses.  
6 Nitrites are used -- historically have been used as  
7 preserving agents, much less today than they once were.  
8 Nitrites in some chemical forms are applied as  
9 fertilizers to soil. Nitrites are used in a variety of  
10 chemical synthetic reactions. And so nitrites can be  
11 used for a lot of different things.

12 Q. Are you aware of nitrites being used in the  
13 commercial context as a preservative in fish meal  
14 products?

15 A. Historically nitrites and formaldehyde were  
16 probably the two most common preservative agents used in  
17 fish meal. That's not true today, but historically  
18 that's true.

19 Q. When can nitrites be added as a preservative to  
20 something like fish or fish meal?

21 A. Nitrites can be added to fish or fish meal  
22 anywhere along the process from the time of harvest,  
23 i.e., when the fish are caught. You know, as -- because  
24 of the potential of bacteria to affect the integrity of  
25 fish it was not uncommon to use a nitrite salt



1 immediately upon gutting and cleaning the fish onboard  
2 the ship right after they were caught. It can be used  
3 anywhere along the process, including during the  
4 grinding and processing, cooking and preparing of the  
5 fish meal itself, it can be used any anywhere along that  
6 stream.

7 Q. What risks, Dr. Hall, if any, are there  
8 associated with using nitrites to preserve fish or fish  
9 meal for use in an animal feed?

10 A. The risk has come back to the potential for  
11 formation of nitrosamines. In the early '60s there were  
12 a number of cases of livestock and mink that were being  
13 fed a diet that contained a high fish meal component  
14 that subsequently died, and that was tracked back and  
15 traced back to nitrosamines as being the causative  
16 agent.

17 Q. Now, are there different types of nitrosamines?

18 A. I mentioned earlier there's in excess of 200  
19 different known nitrosamine compounds.

20 Q. What are the most common types of nitrites that  
21 are used as preservatives in ingredients?

22 A. I don't know that I can say specifically the most  
23 common type. The one I'm familiar with, that I'm  
24 familiar with its use, is basically it's just a sodium  
25 nitrite salt.

1 Q. Okay. Are you aware of whether nitrosamines have  
2 any kind of a health effect on mink?

3 A. Mink have been reported to be one of the most  
4 sensitive mammalian species to nitrosamines.

5 Q. What effect do nitrosamines have, Dr. Hall, on  
6 mink?

7 A. Okay. The effect is -- that's a broad question  
8 because the answer is it depends on the dose. At very  
9 high doses, or relatively high doses comparatively, of  
10 several part per million in the diet, the animals can  
11 die of liver failure within a matter of days. At lower  
12 concentrations the animals can develop liver damage that  
13 results in fibrosis and scarring of the liver to where  
14 they die of liver failure, you know, weeks after  
15 exposure starts. At even lower concentrations they can  
16 develop cancer that can kill them months to a year or  
17 more after exposure starts. So what you see in mink  
18 depends upon the rate of exposure. With lower  
19 concentrations seeing more effect on some scarring and  
20 cancer; moderate concentrations a more direct liver  
21 damage effect; and with the highest concentration  
22 basically it wipes the liver out so fast that it kills  
23 the animal pretty quickly.

24 Q. Are nitrosamines known to have any kind of  
25 reproductive effect on mink as a species?

1       A.   When you deal with toxicants it's not uncommon  
2       that an individual species may not have been tested for  
3       a specific entity.  I am unaware that specific studies  
4       have been established to look specifically at the  
5       reproductive indices in mink associated with nitrosamine  
6       exposures.

7       Q.   We'll get back to that in a second.

8                 How does the effect of nitrosamines on mink  
9       broadly speaking compare to its effect on other animals  
10      based on your review of the literature?

11      A.   It's fairly similar across species, but it  
12      depends somewhat on the specific nitrosamine of  
13      interest, and it also depends somewhat on the overall  
14      exposure.  With ingested nitrosamines some of them, in  
15      fact, most of them are more predominantly damaging to  
16      the liver.  There are some that have some damage to the  
17      kidney effects as well.  There are some that have mixed  
18      effects.  There are some that when inhaled produce lung  
19      tumors.  Nitrosamines in cigarette smoke are one of the  
20      reported causes of lung tumors from cigarettes.

21      Q.   Do you have an opinion on the commercial use of  
22      nitrites as a preservative for ingredients used in mink  
23      feed?

24      A.   Since mink are exquisitely sensitive to the  
25      nitrosamines, that's been fairly well documented, the

1 lethality dose at acute, subacute, and even chronic is  
2 lower, it takes much less of it to actually cause those  
3 effects than it does in other species, I consider it a  
4 danger to use nitrite-preserved fish products in any  
5 mink type feed.

6 Q. Should nitrites be used as a preservative for  
7 ingredients in a facility that manufactures mink feed?

8 MR. MITCHELL: Objection, lacks foundation,  
9 Your Honor. He's not a feed maker.

10 THE COURT: Overruled.

11 Q. (By Mr. Hancey) You can answer.

12 A. And the answer to that is in a controlled  
13 environment if they're separated in such a way that  
14 there's no way they can come in contact with each other,  
15 then there wouldn't be any harm in having nitrites in  
16 the same facility as a facility that's making mink feed.  
17 If there is any potential for cross-contamination or  
18 exposure, then, yes, that would pose a risk.

19 Q. What if the same mixing unit is being used to  
20 manufacture different kinds of feeds, would that be a  
21 possible cause of cross-contamination?

22 A. And that comes back to the -- I am somewhat  
23 familiar with feed mixing operations because I deal with  
24 that through my work. If the plant had standard  
25 operating procedures in place to where they had adequate

1 clean out between batches and that they tested to prove  
2 that that adequate clean out was effective and sound,  
3 then it still poses a risk, but a lesser risk.

4 Q. Okay. Now, Dr. Hall, is any amount of  
5 nitrosamine poisonous if ingested by a mink?

6 A. You can't say any amount, no, sir.

7 Q. Are you aware of any studies that analyzed the  
8 concentration of nitrosamines that would be harmful if  
9 ingested by a mink?

10 A. Yes, sir.

11 Q. And what do those studies say?

12 A. The studies show that concentrations as low as  
13 .1 milligram per kilogram of body weight per day is  
14 toxic to mink. And the studies -- there's other studies  
15 that show as low as .3, there's studies that show as low  
16 as .13, there's -- it depends upon the way the  
17 individual study was set up. With a lot of these  
18 studies what they refer to is a minimum toxic level  
19 observed within the study. Well, is that minimum toxic  
20 level observed within the study the lowest dose they  
21 tested? In several of these studies that's what it came  
22 down to. So there's a gray zone between that lowest  
23 dose that's known to cause an effect and zero. Just  
24 because they didn't test the doses in-between, they know  
25 that this dose is toxic but they don't know if anything

1 lower is.

2 Q. Now, you mentioned that the known toxic  
3 concentration of nitrosamines, I think, is one -- I'm  
4 not good with the metric system, but I think you said 1  
5 milligram per kilogram of body weight; is that correct?

6 A. As low as 0.1.

7 Q. 0.1. Can that metric equation be translated into  
8 a parts per million context?

9 A. Okay. Milligram per kilogram of feed is the same  
10 thing as a part per million. When you are talking  
11 milligram per kilogram of body weight exposure, that's  
12 not a part per million. So you have to be careful in  
13 your interchangement of those units.

14 Q. Are you aware of any studies that talk about the  
15 parts per million of nitrosamines in feed that can be  
16 harmful if ingested by mink?

17 A. I have seen those studies. Most of those studies  
18 I look at it based on milligram per kilogram of body  
19 weight, so I go through all the math to calculate what  
20 the true exposure rate to the animal was, rather than  
21 looking at the concentration in the feed.

22 Q. Now, do the studies that you've referenced, the  
23 ones that you've looked at over your career, do they --  
24 were those studies done on mink that were pregnant or  
25 not pregnant, do you know?

1       A. The majority of them were done on mink that were  
2 nonpregnant. There was one study that had an overlap to  
3 where -- it was a cancer study to where they  
4 specifically were looking at the effects of nitrosamines  
5 at causing cancer initially in a full population, and  
6 then they had a subpopulation that they bred and  
7 followed the babies out to follow the cancer rate out up  
8 to a few hundred days. Actually in that study their  
9 statement was that nitrosamines basically for a long  
10 enough period of time at a concentration that is  
11 effective will produce cancer in 100 percent of the  
12 animals.

13       Q. Okay. What would be a poisonous concentration of  
14 nitrosamines to a pregnant mink?

15       A. The exact answer to that is unknown. We can do a  
16 certain amount of extrapolation based on what we know in  
17 other species. That's a thing that's done in  
18 toxicology. It's actually done in medicine quite  
19 commonly. As an example, you know, looking at a new  
20 drug you're not going to take that new drug and dose a  
21 few hundred people to find out how toxic it is. You  
22 have to do it in animals to determine how safe the drug  
23 is. The same thing is done in toxicology, you're not  
24 going to go in and determine the toxic dose of an  
25 individual compound in every species known to man just

1 so you have that answer. You do it in a subset  
2 population, and then you do a certain amount of  
3 extrapolation between the different species to determine  
4 what the potential risk is.

5 Q. How do you use interspecies extrapolation to  
6 resolve the issue of what concentration of nitrosamines  
7 would be harmful to a pregnant mink?

8 A. Okay. There are studies in mice, in pregnant  
9 mice and pregnant rats. You have to be very careful  
10 when you do the extrapolation because a number of the  
11 studies in pregnant rats they gave as a single very  
12 large dose sometime during pregnancy and then looked at  
13 the cancer risks in the offspring. That does not fit  
14 well with the scenario we're dealing with here where  
15 it's being ingested over a several day to week period of  
16 time. So you have to be careful in the studies that you  
17 evaluate in order to do interspecies extrapolation.

18 The first thing I generally do is I look  
19 back at what is known, what is the toxic dose acutely,  
20 subacutely, and chronically in each individual species  
21 where it has been tested. So in this particular case I  
22 look back, there is a lot of data on acute, subacute,  
23 and chronic toxicity in rats, in mice, and there is some  
24 data available on acute, subacute, and chronic toxicity  
25 in mink. And across the board mink are more sensitive



1     than rats and mice.

2                 Then you actually take the studies that are  
3     applicable, that are oral exposure. I don't want to  
4     obviously look at studies that are inhalation exposure  
5     because that doesn't fit with this case. But with oral  
6     exposure you look at studies to where they have truly  
7     monitored reproduction. That's difficult because  
8     there's not a lot of them. Most of the studies done  
9     with nitrosamines, because it is highly carcinogenic,  
10    have been set up to specifically look at cancer effects.  
11    And when you specifically set studies up to look at  
12    cancer effects, you often don't have appropriate  
13    controls or appropriate mechanisms for interpreting what  
14    it's doing in a pregnancy situation that may affect the  
15    viability or the survivability of a neonate or a fetus.  
16    And so some of the studies are difficult to interpret,  
17    but there are good studies in mice that were very  
18    rigorously designed to specifically look at neonatal  
19    health and neonatal mortality with the nitrosamines.

20         Q. Describe those studies briefly and how you  
21     applied them to the facts of this case.

22         A. Okay. There's two very good studies in mice.  
23     One of them the mice were dosed with 0.1 parts per  
24     million dimethylnitrosamine, which is one specific class  
25     of nitrosamine, or one specific compound of that entire

1 class, at 0.1 parts per million in the water. They  
2 started the mice on the dimethylnitrosamine in the  
3 water. I don't remember the exact number of days, but  
4 it was I think 40 or 60 days prior to breeding,  
5 continued them on that material in the water throughout  
6 gestation and in the post-gestational period. They  
7 monitored the animals for pup numbers per litter, pup  
8 survival, number of pups born dead, number of pups that  
9 died in that early postpartum period, and found that  
10 there was over a 10 percent increase in the number of  
11 neonatal mortality. That was statistically significant  
12 comparing between the treatment group that got no  
13 nitrosamines and the group that got nitrosamines in that  
14 particular study.

15 Q. When you reference neonatal mortality, what do  
16 you mean?

17 A. Neonatal mortality, death in a time period very  
18 close to birth.

19 Q. To the young or to the offspring of the parent?

20 A. Correct, to the offspring of the parent.

21 There was another study where they actually  
22 dosed mice with 0.01 parts per million  
23 dimethylnitrosamine in the water, and looked at the  
24 effect. In that particular study they found increased  
25 amount of cancer in the offspring. So we do know that

1 at least in pregnant mice that the effect on the  
2 offspring can be as low as 0.01 parts per million in  
3 water, and since mice consume approximately the same  
4 amount of water as they do dry matter food intake per  
5 day that can then be cross-correlated with an  
6 approximately identical concentration in food, and since  
7 we know that mink are more susceptible than mice at all  
8 the other parameters that have ever been measured as far  
9 as acute, subacute, and chronic fatality, you can make  
10 the -- within a reasonable degree of scientific  
11 certainty, you can make the jump that mink would be  
12 equally more sensitive to the effects on reproduction.

13 Q. In other words, pregnant mink would be harmed by  
14 concentrations of nitrosamine at less than .01 parts per  
15 million.

16 A. Yes.

17 Q. How do you know that the lactation crumlets that  
18 were fed to the Jonssons' mink contained nitrosamines?

19 A. There was analytical testing done on the crumlets  
20 from the same shipment that contained nitrosamines.

21 Q. Now, who ordered the lab reports that you  
22 reviewed in your investigation in this case?

23 A. There were a lot of lab reports in what I  
24 reviewed. They were odored by just about everybody  
25 involved at one point or time if you look at the total

1 breadth of what I reviewed. Some of the lab reports  
2 were ordered by the Jonssons. There were other lab  
3 reports that were ordered by Kent Griffeth.

4 Q. Did you order some?

5 A. There were lab reports that I ordered as well.

6 Q. There's an exhibit book in front of you, sir,  
7 that rather large binder there, could I have your  
8 attention directed to tab number 16 please.

9 A. You said 16, sir?

10 Q. Yes, sir. I want to direct your attention  
11 specifically -- that exhibit contains four pages.

12 A. Excuse me, sir, just for clarification is it the  
13 pages in front of the tab or the pages after the tab?

14 Q. Following the tab, yes.

15 A. Thank you, sir.

16 Q. Yes, sir. Now, there are four pages there. If  
17 you'll focus your attention for a minute on the last  
18 three pages in that exhibit, do you recognize those  
19 three pages?

20 A. Yes, sir.

21 Q. Okay. And what are they?

22 A. Okay. They are three different samples that I  
23 requested analysis at Adamson Analytical Labs for  
24 nitrosamines.

25 Q. You sent these samples in yourself.

1 A. Yes, sir.

2 Q. Now, for these particular reports in question,  
3 what samples did you use?

4 A. I obtained samples from Mr. Kent Griffeth. He  
5 actually drove down to the lab. On one of the samples,  
6 it would be on page 2 --

7 Q. Just for the record, there's a number in the  
8 bottom right-hand corner that would be 2243?

9 A. Yes, sir.

10 Q. Okay. Go ahead.

11 A. On 2243 the sample name is Mink Lactation  
12 Feed-Kent 11/29/11. The sample was brought to me on  
13 November 29, 2011, and it was in a bag that had already  
14 been sampled by Mr. Kent Griffeth.

15 Q. Okay.

16 A. The next page, 2244, it says, Bag Number 2  
17 Unopened Bag Mink Lactation Feed-JOH-11/29/11. That  
18 sample was brought on November 29, 2011. It was an  
19 unopened bag of crumlets that I personally opened in  
20 order to sub-sample.

21 Q. Okay. And the next one?

22 A. The next one says Bag Number 4 Fish Meal-Kent  
23 11/29/11. That was a sub-sample of fish meal that  
24 Mr. Griffeth brought me on that same November 29, 2011  
25 date.

1 Q. Now, are you familiar with the method by which  
2 Kent Griffeth sub-sampled the samples he gave to you?

3 A. Mr. Griffeth explained to me that he had a bag of  
4 the lactation crumlets, that he just went in and scooped  
5 some of it out was the way he described it to me.

6 Q. Did he describe to you any special care or  
7 precaution he took to ensure the sample he was giving  
8 you was sterile or intact?

9 A. He indicated to me that he -- the sample had been  
10 retained since the initial incident with the mink mother  
11 and kits, that it had been retained on a pallet in a  
12 cool room at a controlled environmental temperature, and  
13 that he had just sub-sampled one of the bags out of that  
14 controlled environment.

15 Q. How did you come to receive an unopened bag of  
16 lactation crumlets for sampling purposes?

17 A. I specifically told Mr. Griffeth when he asked me  
18 that he wanted -- when I suggested that the nitrosamines  
19 be tested for, I told him that the best thing was if I  
20 had an unopened bag that I could sample from.

21 Q. Why?

22 A. Because that provides the utmost in chain of  
23 custody. If the bag is unopened, then the likelihood of  
24 any type of adulteration to that bag is minimized.

25 Q. Do you understand that bag to have been taken

1 from the same refrigerated cooler you discussed earlier?

2 A. That's the way I was instructed, yes, sir.

3 Q. Please just briefly describe for the jury your  
4 methodology for extracting the sample you took from the  
5 unopened bag.

6 A. I cut the top of the bag open. I have a sterile  
7 clean plastic sampling bag that I then sub-sampled  
8 directly out of the intact bag into. After I obtained  
9 the sample and took the samples that Kent had already  
10 sub-sampled out of another bag for me, I placed them in  
11 a controlled environment freezer at the veterinary  
12 diagnostic lab until I had the analyses performed.

13 Q. Until you mailed the samples to the labs?

14 A. That's correct.

15 Q. Did you mention whether or not you wore gloves  
16 when you personally sub-sampled from the unopened bag?

17 A. I didn't mention, but yes, I do.

18 Q. Now, on what date did you actually send these  
19 samples that you say you put in the freezer at the Utah  
20 State lab in for testing at the independent  
21 laboratories?

22 A. They were actually sent in in March of 2012.

23 Q. Why the time delay between when you received the  
24 samples and the time you sent them in for testing?

25 A. I began a search for a lab that would test feed

1 material for nitrosamines. I found numerous labs  
2 throughout the United States that test water on an  
3 everyday basis, but none of them had a methodology  
4 established and certified for testing feeds. I had  
5 several tell me that they would try, but in a case like  
6 this you don't want somebody that's going to try, you  
7 want somebody that has experience doing it that you can  
8 trust the results. And it took me a period of time to  
9 find a lab that met those qualifications.

10 Q. What significance, if any, do you attach to the  
11 period of time that lapsed between when you obtained the  
12 samples, froze them, and sent them off to the  
13 independent laboratories?

14 A. That timeframe would have had no bearing because  
15 the samples were frozen.

16 Q. What bearing, if any, would any time lapse  
17 between the time the -- well, from -- well, let me  
18 strike that question and ask it this way.

19 Do you know, or have an idea of when the  
20 lactation crumlets were processed by Rangen?

21 A. I don't remember the exact date. I know I've  
22 seen it. I know it was in the late spring of 2010.

23 Q. Kent Griffeth and Keith Jonsson have testified in  
24 this case that they received their order of crumlets in  
25 about the latter part of April, does that sound about



1 right to you?

2 A. That sounds familiar, yes, sir.

3 Q. If that is true, Dr. Hall, do you attach any  
4 significance to the time lapse between when the Jonssons  
5 and Griffeths received their order of lactation crumlets  
6 and the time you received the samples that you  
7 ultimately sent in for testing?

8 A. Could you clarify the question please.

9 Q. Do you attach any significance to any time lapse  
10 there was between the time the parties in this case  
11 first obtained their order of lactation crumlets and the  
12 time you received the samples that you sent in for  
13 testing?

14 A. Because the samples were stored under a  
15 refrigerated condition I don't feel that the time has  
16 any bearing on the analytical results.

17 Q. Why not? What does that have to do with, I don't  
18 know, quashing any of your concerns?

19 A. Nitrosamines typically are formed at higher  
20 temperatures, during cooking processes and things of  
21 that nature. In a refrigerated storage unit you're not  
22 going to have the heat necessary for that chemical  
23 conversion to actively cause that chemical reaction.

24 Q. Is the methodology you described by which you  
25 obtained the sub-samples from the unopened bag, froze

1     them, and then sent them into the laboratories something  
2     that is an acceptable practice in the field of  
3     toxicology?

4         A.    I deal with sub-sampling materials all the time  
5     in sending it to outside labs.  I took the same natural  
6     precautions that I do.  Any time I do that I try to  
7     prevent any contamination.  I sample with clean gloves,  
8     put into clean sterile bags, maintain it in a controlled  
9     environment during any holding time, anything necessary  
10    to just verify that the sample integrity is retained.

11        Q.    Do you have any concerns about any of the lab  
12    reports, the Adamson Lab reports, that are contained in  
13    Exhibit 16?

14        A.    I don't have any concerns about any of them, no,  
15    sir.

16        Q.    Okay.  Did you receive the second, third, and  
17    fourth pages of Exhibit 16 back from the Adamson Lab?

18        A.    I received those back directly from the  
19    laboratory, yes, sir.

20        Q.    Now, let's focus on the first of those lab  
21    reports for a minute, Dr. Hall, that's again page 2243,  
22    do you have that?

23        A.    Yes, sir.

24        Q.    What does this first lab report from Adamson tell  
25    us about the lactation crumlets?

1 A. Okay. You said 2243?

2 Q. That's correct.

3 A. There was actually three different nitrosamines  
4 analyzed for. All three of them were detected by gas  
5 chromatography, the nitrosodiethylamine,  
6 nitrosodimethylamine, and nitrosodibutylamine at  
7 concentrations of 0.28, 0.12, and 0.39 parts per  
8 million.

9 Q. What about the second lab report, that would be  
10 2244, what does that tell us?

11 A. The same three nitrosamines were detected at  
12 concentrations of 0.4, 0.22, and 0.74 parts per million.

13 Q. And the third lab report, page 2245?

14 A. And the third lab report is the one that deals  
15 with the fish meal, and it had nitrosamines at -- let's  
16 see, nitrosodiethylamine at 0.63, nitrosodimethylamine  
17 at 0.34, and nitrosodibutylamine at 0.46 parts per  
18 million.

19 Q. What is the difference between the three kinds of  
20 nitrosamines being tested for in these lab reports?

21 A. These are three common nitrosamines.  
22 N-nitrosodimethylamine is actually one of the most toxic  
23 of the nitrosamines. It is the one that has had a vast  
24 amount of research done on it. The nitrosodiethylamine  
25 is slightly less toxic, and n-nitrosodibutylamine is the

1 least toxic of these three, but all three of them are  
2 still toxic.

3 Q. What significance do you attach to the fact that  
4 all three of these lab reports show that there are  
5 nitrosamines in three different types in the lactation  
6 crumlets?

7 A. That gives me confidence that the results are  
8 real, that the lactation crumlets were contaminated with  
9 nitrosamines.

10 Q. What possible explanations are there for the  
11 presence of nitrosamines in the lactation crumlets?

12 A. The most common source of nitrosamines in feeds  
13 and forages is associated with fish meal inclusion in  
14 diets, although it's not exclusive because you can get  
15 small amounts of nitrosamines from other sources, other  
16 contaminations, but the most common is associated with  
17 fish meal inclusion in diet formulations and that fish  
18 meal having been preserved with nitrites.

19 Q. Are you familiar with the ingredients that went  
20 into the lactation crumlets?

21 A. I have reviewed that document. I don't know it  
22 by heart, but I have reviewed it.

23 Q. Do you know whether or not fish meal is one of  
24 the ingredients in that product?

25 A. As I remember, fish meal is one of the

1 predominant ingredients in that product.

2 Q. Based on your experience and knowledge, what  
3 ingredients do you believe are most likely to have been  
4 contaminated or preserved with nitrites that make up the  
5 lactation crumlets?

6 A. The fish meal.

7 Q. Did you determine at what point the nitrites were  
8 introduced into the crumlet ingredients?

9 A. No, sir.

10 Q. Let me direct your attention now, Dr. Hall, to  
11 what's been marked as Exhibit 17. Do you have that?

12 A. Yes, sir.

13 Q. I want to focus your attention on the first page,  
14 which again down at the bottom is 1118, do you see that?

15 A. Yes, sir.

16 Q. Now, is this one of the lab reports that you  
17 reviewed as part of your investigation into this case?

18 A. Yes, sir, it is.

19 Q. Okay. And this is a lab report from a laboratory  
20 called NSF Surefish, correct?

21 A. That is correct.

22 Q. Tell us what this report indicates as far as the  
23 case is concerned.

24 A. There was a sample sent by Mr. Kent Griffeth to  
25 the NSF Surefish laboratory, requested sampling to be

1 tested for formaldehyde and sodium nitrite. It  
2 contained formaldehyde at 45 parts per million and  
3 sodium nitrite at 1.57 percent.

4 Q. What is the significance of this finding of  
5 sodium nitrite in the fish meal that was tested here?

6 A. It's not so much the significance of the fact  
7 that it was found, it was the fact that it was found at  
8 1.57 percent. That's an extremely high occurrence, and  
9 the only way you would ever see that amount of sodium  
10 nitrite in a fish meal sample would be if that fish was  
11 preserved with sodium nitrite.

12 Q. Let me direct your attention to the second page  
13 in that exhibit, page 1119, do you see that?

14 A. Yes, sir.

15 Q. Is this a lab report that made up part of your  
16 investigation in this case?

17 A. Yes, sir.

18 Q. Okay. What is its significance?

19 A. It is another sample. It is a lactation feed  
20 sample, it says Fish Meal Lactation Feed, that was sent  
21 in for testing for formaldehyde and sodium nitrite. It  
22 contained formaldehyde at 110 parts per million and  
23 sodium nitrite at 1.5 milligrams.

24 Q. What's the significance again of this lab report?

25 A. The fact that the sodium nitrite is present in

1 the final feed.

2 Q. In the lactation crumlets.

3 A. In the lactation crumlets, indicates that there  
4 was a contamination of an ingredient that went into that  
5 lactation crumlets. There again, since the fish meal  
6 that was tested was identified to me as being obtained  
7 from Rangen at the same time period as the lactation  
8 crumlets, that would indicate that the fish meal onsite  
9 at the time the lactation crumlets was made had the  
10 potential to be contaminated with sodium nitrite or  
11 preserved with sodium nitrite, the fact that sodium  
12 nitrite is in the final product indicates that a fish  
13 meal that had been preserved with sodium nitrite was  
14 used in the lactation crumlets.

15 Q. Now, what do the nitrosamine concentrations  
16 identified in the lab reports we've looked at so far  
17 tell you about the nitrosamine concentrations that were  
18 present in the feed at the time it was eaten by the  
19 Jonssons' mink?

20 A. Since the nitrosamines are typically formed at an  
21 acid environment at higher temperatures and since the  
22 material had been stored under refrigerated conditions,  
23 the nitrosamine concentration at the time of feeding  
24 should be similar, if not identical, to the  
25 concentration that was present at the time of testing

1 and feeding both. Because nitrosamines have some  
2 volatile characteristics, there is the possibility that  
3 some of the nitrosamines present in the lactation  
4 crumlets volatilized off over time, and so the  
5 concentration in what was tested may have actually been  
6 lower than what was actually in the feed at the time of  
7 feeding.

8 Q. Now, the Jonssons have testified over the last  
9 couple of days that when they fed their mink in the  
10 spring of 2010 they mixed bags of lactation crumlets in  
11 with feed, regular mink feed they got from their co-op;  
12 are you familiar with that testimony?

13 A. Yes, sir, I am.

14 Q. What bearing does that fact have on your analysis  
15 of how much nitrosamine was in the mink diet at the time  
16 they ate the lactation crumlets?

17 A. When you have multiple ingredients in a feeding  
18 situation you have to take into effect dilutional  
19 calculations, and so you have to actually calculate what  
20 the final concentration was. I do it on a dry-matter  
21 basis because doing it on a dry-matter basis makes it  
22 much easier to convert between species, especially when  
23 you're doing interspecies extrapolation. When looking  
24 at the mice and the rat studies when it's fed to them  
25 it's fed in a pelleted feed that is relatively a



1 dry-matter basis at the time of feeding. So in order to  
2 do a direct one-to-one comparison you need to actually  
3 evaluate the mink feed on a dry-matter basis as well.  
4 That way you're comparing apples and apples instead of  
5 apples and oranges.

6 Q. When you talk about a dry-matter basis what are  
7 you referring to?

8 A. Any dietary ingredient can have a certain amount  
9 of water. An apple, for example, may be 50 percent  
10 water if you actually dried it and weighed it before you  
11 dried it and weighed it and after you dried it. So the  
12 dry-matter basis is the dried apple, the wet matter  
13 basis is the apple intact is a good way to describe it.

14 Q. Okay. And what is your understanding of the  
15 composition of the co-op feed the Jonssons were  
16 including in this mixture in the spring of 2010?

17 A. When the co-op feed was originally described to  
18 me the actual characteristics of the co-op feed was not  
19 adequately described to me. I found out during the  
20 process of the investigation towards the latter end of  
21 preparing for this trial, that the co-op feed actually  
22 contained a significant amount of water.

23 Q. What percentage of water?

24 A. It varied. It was in some cases as much as 66,  
25 67 percent. In some cases it was as little as

1 50 percent. But there was a wide variability in the  
2 amount of water.

3 Q. Is there water content to some extent in the  
4 lactation crumlets that were fed in 2010?

5 A. It's very small. I had one sample that I did dry  
6 just for curiosity and it was about 6 percent moisture  
7 was all.

8 Q. What is your understanding, Dr. Hall, of the  
9 ratio of co-op feed, water, and lactation crumlets that  
10 the Jonssons fed to their mink in the spring of 2010?

11 A. The way it was described to me was that the ratio  
12 of mixing was roughly 20 to 25 percent lactation  
13 crumlets, 75 to 80 percent co-op feed, and that's the  
14 way it was originally described to me. In review of  
15 depositions there was also some water added to that  
16 mixture, but that is not the way it was originally  
17 described to me because I told them that I just wanted  
18 to know how the feed itself was mixed.

19 Q. Once you eliminate all of the moisture or water  
20 from the co-op feed and the crumlets and the water that  
21 the Jonssons added to that mixture, what concentration  
22 of nitrosamines was in the mixture at the time it was  
23 fed to the Jonssons' mink in Lehi?

24 A. If I remember the calculations correctly, I  
25 provided those documents to you, it was up to .1 part

1 per million in the final dry matter diet.

2 Q. Up to what, I'm sorry?

3 A. 0.1 part per million in the diet, or milligram  
4 per kilogram of diet, either way.

5 Q. Does that 0.1 number have any significance to  
6 you?

7 A. Yes, because at concentrations that are identical  
8 there were reproductive issues, neonatal mortality,  
9 neonatal deaths, and stillborns in the mice study that  
10 was dosed in water at the same concentration, and since  
11 mice drink approximately the same amount of water as  
12 they eat feed, that would be directly correlated to a  
13 food intake, so the mice were ingesting an equal  
14 concentration to what was toxic in mice, and we know  
15 that mice are more sensitive than mice.

16 Q. Now, when you say at .1 percent, are you  
17 referring to one type of nitrosamine or all of the  
18 nitrosamines that were tested for?

19 A. Okay. It was not .1 percent, it was .1  
20 milligrams per kilogram of feed, and that was just in  
21 nitrosodimethylamine. That did not account for any of  
22 the other nitrosamines tested.

23 Q. What bearing do those other kinds of nitrosamines  
24 that were found in the lactation crumlets have on your  
25 analysis?

1       A. The other nitrosamines are toxic as well, they're  
2 just not as toxic. As an example, the  
3 n-dibutyl nitrosamine has been referenced to be less than  
4 one tenth of the toxicity of the dimethyl nitrosamine,  
5 and diethyl nitrosamine falls between those two. So  
6 they're not as toxic, but they are still toxic. You  
7 can't add them together and look at a total number  
8 because they vary in toxicity and there's not as much  
9 data available to evaluate for the dibutyl or the  
10 diethyl nitrosamines as there is the dimethyl nitrosamine.  
11 But they have the potential of causing additive effects  
12 to what has been described for the dimethyl nitrosamine.

13       Q. I believe you stated earlier, correct me if I'm  
14 wrong, that in your opinion the nitrosamine  
15 concentration that was in the feed at the time it was  
16 tested is the same as the nitrosamine concentration in  
17 the crumlets at the time they were manufactured or fed  
18 to the Jonssons' mink; is that a fair characterization  
19 of your testimony?

20       A. From a science standpoint you can't say it's the  
21 same. You can say that within a reasonable degree of  
22 scientific certainty the concentration identified at the  
23 time of testing should be nearly identical to that which  
24 was present at the time of feeding.

25       Q. What are the clinical symptoms for nitrosamine

1 poisoning, Dr. Hall?

2 A. Nitrosamine poisoning, it can vary. And there  
3 again it comes back to dose. The more acute higher  
4 doses that cause very sudden disease and very sudden  
5 onset of illness, animals become very depressed, they  
6 will actually back away from feed, quit eating, become  
7 reclusive. One of the reports described them as  
8 basically hiding behind cages. You know, they just  
9 don't feel good. I mean they don't act or behave  
10 normally. As you get later into the syndrome in those  
11 doses the animals are dying of liver failure. So  
12 there's also the possibility of them developing icterus  
13 or jaundice, or a yellow-green discoloration to the  
14 whites of the eyes, things of that nature.

15 Q. How would nitrosamine poisoning manifest itself  
16 in a pregnant mink?

17 A. I would expect that it would manifest itself in a  
18 similar way to what has been described in mice and in  
19 rats with some other nitrosamines in that you'll see a  
20 decrease in birth weights, you'll see a decrease in  
21 viable offspring, in other words, you'll have some  
22 stillbirths and a decrease in the viability of the  
23 offspring that are born live.

24 Q. What is your understanding of the symptoms  
25 exhibited by the Jonssons' mink after they began

1 consuming the lactation crumlets?

2 A. As it was described to me, the mink began  
3 exhibiting signs of some reluctance to eat the feed, not  
4 necessarily complete anorexia, but some reluctance to  
5 eat the feed, which was described to me as not being  
6 unusual at the time of the mink having kits. It wasn't  
7 unusual for mink to back away from feed a little bit,  
8 you know, the day before or the day that they have their  
9 kits, but usually they come right back on to feed is the  
10 way it was described to me. But these mink did not tend  
11 to come back on to feed as they normally would, that  
12 they had an abnormally large number of kits that were  
13 born dead or died within a few days of birth was the  
14 predominant manifestation that was described to me.

15 Q. You mentioned that you reviewed a lot of  
16 information while you performed your analysis of this  
17 case, correct?

18 A. Yes, sir.

19 Q. Have you come across any information, Dr. Hall,  
20 that would lead you to believe that disease played any  
21 part in the death of the Jonssons' mink in 2010?

22 A. No, sir, I have not.

23 Q. Are you familiar with a compound known as  
24 histamine?

25 A. Yes, sir, I am.

1 Q. What is histamine?

2 A. Histamine is basically a nitrogenous molecular  
3 substance that has a wide variety of effects on a body  
4 or tissues. It can affect a lot of different organ  
5 symptoms.

6 Q. What effect does histamine have on mink?

7 A. Histamine has been studied in mink, it is known  
8 that it can affect their food intake, it can cause them  
9 to have digestive disturbances, they can have vomiting  
10 and diarrhea, they can have decreased weight gain, they  
11 can have decreased feed efficiency, they can actually  
12 have some damage to the lining of the digestive tract  
13 where they end up with swollen stomachs.

14 Q. At what concentration can histamine be toxic to a  
15 mink?

16 A. The predominant study that I utilized I believe  
17 the lowest concentration they fed was 110 or 118 parts  
18 per million in the final diet. They did have adverse  
19 effects. That was actually the lowest amount that they  
20 fed. But in that same paper they referenced other -- a  
21 study article saying that concentrations of above 50  
22 parts per million has been reported to be -- to  
23 potentially cause adverse effects.

24 Q. What concentration of histamine would be toxic to  
25 a pregnant mink?

1       A. That's a difficult question because the true  
2       answer is we don't know. I've never seen any studies  
3       where they actually dosed histamine to pregnant mink to  
4       look at the effect. Looking at a variety of other  
5       studies, it is known that at least in some species  
6       during pregnancy there are enzymes that help break down  
7       histamines where it may not be as much of a problem.  
8       But that effect in mink is not known.

9               THE COURT: Are you about through with him,  
10       counselor?

11              MR. HANCEY: I'm sorry?

12              THE COURT: Have you got a few more minutes  
13       with him?

14              MR. HANCEY: I do, Your Honor, and this  
15       might be a good point to break.

16              THE COURT: Why don't we give these folks a  
17       15-minute break. Remember what I told you. Let's be in  
18       recess for 15 minutes. Quarter to.

19              MR. HANCEY: Thank you.

20              (Recess.)

21              THE CLERK: Court resumes session.

22              THE COURT: We're all here, and you go  
23       ahead, counselor. Let's bring in the jury.

24              (Jury present in open court.)

25              THE COURT: Again, thanks, folks, sit down,



1 relax.

2 Let's continue, counselor.

3 MR. HANCEY: Thank you, Your Honor.

4 Q. (By Mr. Hancey) Okay. Dr. Hall, when we left off  
5 we were talking about histamine. Let me direct your  
6 attention, sir, to Exhibit 17, and specifically the  
7 third page in that exhibit, and the number down at the  
8 bottom is 1120. Are you with me?

9 A. Yes, sir, I am.

10 Q. Have you seen that document before?

11 A. Yes, sir, I have.

12 Q. Is that something that you've relied on in this  
13 case?

14 A. Yes, sir.

15 Q. Now, let me just keep your finger there and turn  
16 over to tab 18 and look at the first page of that  
17 exhibit, number 1116, do you recognize that document?

18 A. Yes, sir.

19 Q. Is that something that you've relied on in this  
20 case?

21 A. Yes, sir.

22 Q. What do these two lab reports, Dr. Hall, one from  
23 Surefish and one from eurofins, a different lab, tell  
24 you about this case?

25 A. Both of them had concentrations of histamine that

1     were high. The lactation crumlets, 25 percent fish meal  
2     in the Surefish analytical testing sample was 442.2  
3     parts per million, which is the same thing as 442.2  
4     milligrams per kilogram of feed. The other sample on  
5     the eurofin certificate of analysis was histamine at 206  
6     micrograms per gram. And micrograms per gram is the  
7     same thing as milligrams per kilogram, which is the same  
8     thing as parts per million. So one of the reports had  
9     442.2 and the other report had 206.

10       Q. Are the numbers in these lab reports  
11     representative, Dr. Hall, of the histamine  
12     concentrations that were actually consumed by the  
13     plaintiffs' mink?

14       A. Actually there's no way to know for sure, but  
15     they are likely less than what was present at the time  
16     of food consumption.

17       Q. Are you saying that the concentrations of  
18     histamine in the feed -- in the crumlets at the time of  
19     feeding was less than what we're seeing in these test  
20     results some months later?

21       A. I'm saying that there is the potential for them  
22     to be less. There was actually a number of different  
23     tests, and concentrations were, I guess a good way to  
24     describe it, all over the board, ranging from fairly low  
25     concentrations to fairly high concentrations. The

1 concentrations in each of those samples tested were all  
2 likely higher at the time that the feed was manufactured  
3 than they were at the date of testing.

4 Q. Why is that?

5 A. Because most of the histamine that's produced in  
6 fish is produced from histidine, an amino acid. That  
7 histidine conversion to histamine occurs fairly readily.  
8 That's one of the reasons fish are preserved fairly  
9 quickly after harvest, either put on ice or treated with  
10 some type of preserving agent to prevent the degradation  
11 of the fish tissue. During that degradation process is  
12 when you get that histamine production. A number of  
13 studies have been done that looked at histamine  
14 concentrations across time and found that at a variety  
15 of temperatures, at a variety of humidity conditions,  
16 that the histamine significantly drops across time.

17 Q. Can you say with a degree of scientific certainty  
18 whether or not the histamine concentrations in the  
19 lactation crumlets at the time the Jonssons' mink were  
20 fed were at toxic levels?

21 A. Because of the high variability, there is, with a  
22 reasonable degree of scientific certainty, at least some  
23 of the bags that contained histamine concentrations at  
24 toxic concentrations.

25 Q. At the time of feeding?

1           A.    At the time of feeding.

2           Q.    What significance, if any, do you place on the  
3 fact that there were histamine concentrations found in  
4 some of these lab reports that you described as being  
5 all over the map?

6           A.    I've seen that in a number of cases I've been  
7 involved with around the country. One example that I  
8 had on a case in Virginia there was a feed mixing error.  
9 In that particular case there was an ionophore feed  
10 additive in a horse feed which was toxic. We tested --  
11 I think when we finish tested we tested 28 separate bags  
12 from one production lot, and we had concentrations that  
13 ranged from zero to concentrations up as high as 1800  
14 milligrams per kilogram of feed just because the feed  
15 was not uniformly mixed. It came all out of the same  
16 batch, but there was some disparity within that batch  
17 because it was not completely homogenous.

18          Q.    How would histamine poisoning manifest itself  
19 clinically in a mink?

20          A.    It can cause some gastric irritation. It has the  
21 potential of causing some vomiting and diarrhea at --  
22 even in concentrations that are high that cause vomiting  
23 and diarrhea in some studies it's reported that over  
24 time the animals acclimate to it, they still have the  
25 potential of a loose stool, even though it may not be

1 complete profuse watery diarrhea, but the stool may  
2 still be loose and they still have the potential of  
3 causing decreased feed intake, decreased feed  
4 efficiency, decreased gain, the animals don't grow as  
5 fast, and they can have some lesions in the stomach as  
6 well.

7 Q. What symptoms would we find for histamine  
8 poisoning in pregnant mink?

9 A. The potential is that animals that have gastric  
10 distress don't eat as much. Animals that are pregnant  
11 have a higher metabolic demand, and so if animals are  
12 forced to restrain from eating during a time of high  
13 metabolic demand, it can put them into a negative energy  
14 situation to where they may not have appropriate body  
15 nutrients to adequately supply the fetus to adequately  
16 produce milk after having the kits to provide for kit  
17 survival. Because there is minimal, very, very minimal  
18 data on histamine and pregnancy, it becomes a very  
19 difficult question to answer and you have to -- you have  
20 to answer it knowing what histamine causes in a  
21 nonpregnant animal and use some degree of scientific  
22 reason from that point.

23 Q. Is that something that's acceptable in your -- in  
24 what you do?

25 A. In many cases you have to extrapolate because

1     there may not be studies done in the individual species  
2     or at the individual age or at the individual subset  
3     population for every compound, and so there are times  
4     that you have to extrapolate between species the same  
5     way as you do when you extrapolate from animal studies  
6     to humans. At human poison control centers, obviously  
7     you're not going to dose people to determine how you  
8     want to treat a poison. You have to do it based on what  
9     we know in animals, and you have to do that same  
10    extrapolation between animal species.

11       Q. Now, you testified earlier, Dr. Hall, that it was  
12    your scientific opinion that nitrosamines have a  
13    neonatal -- or are toxic to the offspring or to the  
14    young of adult animals, including mink; is that a far  
15    characterization? I think you said it was neotoxic to  
16    mink.

17       A. It is neotoxic to mice.

18       Q. To mice. And you used extrapolation to bring  
19    those studies over into the realm of mink; is that  
20    correct?

21       A. That is correct.

22       Q. Now, the Jonssons testified earlier in this trial  
23    that in 2010 they also lost about 400 adult mink. Do  
24    you have an opinion on how nitrosamines could have  
25    impacted the adult mink, or the adult pregnant mink that

1 consumed the lactation crumlets during that period of  
2 time?

3 A. The concentrations of nitrosamine would not have  
4 been high enough to where I would have expected to see a  
5 direct effect of the nitrosamines causing mortality in  
6 the mothers. The concentrations to where that does  
7 happen on an acute basis are much higher than what we've  
8 identified in this particular case. However, because it  
9 has the potential, based on my studies and based on  
10 things that have been seen in rats and other species  
11 associated with decreased offspring survival and the  
12 production of stillbirths, if an animal had stillbirths  
13 or had a fetus that had died that, for example, got  
14 retained within the uterus, then you can see  
15 complications from the dead fetus beyond the dead fetus  
16 itself if it's not properly expelled, and sometimes that  
17 occurs.

18 Q. Do you have an opinion on whether or not the  
19 Jonssons could expect to see continued health effects in  
20 their mink heard at the Lehi Ranch following the 2010  
21 calendar year?

22 A. There is a potential yes, sir.

23 Q. Based on what?

24 A. In studies at lower concentrations very  
25 long-term, in fact -- I can't quote it directly, but

1     this is close, they stated that mink provided  
2     nitrosamines for a long enough duration there's the  
3     potential for production of cancers in 100 percent of  
4     the animals. Now, in this particular situation, the  
5     contaminated lactation crumlets were fed for a window of  
6     time, not continuously. You have the potential, even  
7     with the window of time exposure, when you're dealing  
8     with a cancer producing agent to cause DNA damage that  
9     can result in those animals developing tumors months or  
10    even a year after the fact. So, yes, there is the  
11    potential.

12       Q. Now, we have discussed nitrosamines and we've  
13    discussed histamines. Is there anything else you  
14    considered, Dr. Hall, in formulating your opinions in  
15    this case?

16       A. In evaluating a case of this nature you have to  
17    evaluate everything, you know, not just individual  
18    compounds. There were a number of things that were  
19    brought to my attention that were initially thought to  
20    be issues with the mink. There was investigations done  
21    along the lines of ionophores in the feed, and I quickly  
22    instructed the Jonssons and the Griffeths both that  
23    that, at the concentrations that were identified, was  
24    not a problem. You know, it was obviously a low enough  
25    concentration that it was of no concern whatsoever to



1 me. There was discussion of vitamin E deficiencies  
2 potentially being a problem. The indications were,  
3 based on feed testing and things of that nature, that  
4 there was adequate vitamin E in the feed, that some of  
5 the animals that tested, the low vitamin E may have been  
6 secondary to something else causing the vitamin E to go  
7 away, which you can see with oxidative stress and  
8 diseases, chemical reactions, things of that nature.

9           The key that I kept coming back to, there  
10 has been some suggestion of infectious ideologies, and  
11 for various reasons those infectious ideologies were in  
12 my mind ruled out based on circumstances and facts  
13 associated with the case. And so I look at that in a  
14 broad umbrella in order to focus myself down to a final  
15 diagnosis and final conclusion.

16           One of the key things for me comes back to  
17 what I described early on. This was a very nice case  
18 control study where we have four separate locations,  
19 three of which received the feed in question and one of  
20 which did not. The three locations that received the  
21 feed in question had what was described to me as almost  
22 identical clinical manifestations within the animals.  
23 As it was described to me, two of the locations -- or  
24 one of the locations had a slightly higher mortality.  
25 That same location was one that include the crumlets at

1 a higher rate of inclusion. And so in some ways looking  
2 at that it was almost like a dosed case controlled study  
3 as well. The one location where the feed was not fed,  
4 there was not the problem. That points to the feed as  
5 being a causative source.

6 There was indication of infectious  
7 ideologies potentially being a problem. For various  
8 reasons I ruled that out.

9 Q. By that you mean disease?

10 A. Correct.

11 Q. Okay.

12 A. There were some animals that had tested positive  
13 for Aleutian disease on the Jonssons' ranch. Actually  
14 that didn't surprise me because I was told upfront that  
15 Aleutian disease was endemic on that ranch.

16 Interestingly enough, at the location of Mr. Griffeth  
17 his mink were Aleutian disease free and they showed the  
18 same clinical signs. So if you see a population where  
19 everything's showing the same signs and one group has X  
20 and one group doesn't have X, then X is likely not the  
21 cause in all locations.

22 The thing that was common in all locations  
23 was the lactation crumlets. We identified toxic  
24 concentrations of histamines and nitrosamines in those  
25 lactation crumlets, and so that's what narrowed the

1 field.

2 Q. What is your understanding of the husbandry, or  
3 the ranching practices that exist among the Jonssons'  
4 two ranches?

5 A. I am not a mink ranching expert. I have been on  
6 a mink ranch once in my life, and so my understanding is  
7 there was no indication they were outside of an industry  
8 norm, at least nothing that I read in any of the  
9 depositions and anything else indicated that they were  
10 outside of the industry norm.

11 Q. Dr. Hall, can you summarize your findings and  
12 opinion in this case for the jury.

13 A. Based on the evaluation of the data provided to  
14 me, on the scientific literature, the research, and the  
15 analytical testing that I've evaluated, it is my  
16 professional opinion, within a reasonable degree of  
17 scientific certainty, that the lactation crumlets was  
18 the causative entity associated with the increased  
19 neonatal mortalities that occurred in the May-June time  
20 period 2010 at the Jonssons' ranch.

21 Q. What about the mink that died on the Jonsson  
22 ranch later in the year?

23 A. Any time you have a ranch operation where you  
24 have thousands of animals you're going to have deaths.  
25 Being able to attribute it back to the original feed is

1 very difficult because you're going to have natural  
2 disease entities that occur. Is it possible that some  
3 of those animals had tumors and died and they weren't  
4 identified? Yes, it's possible. But to what degree I  
5 cannot, with a reasonable degree of scientific  
6 certainty, say.

7 MR. HANCEY: No further questions, Your  
8 Honor.

9 MR. MINNOCK: Thank you, Your Honor. It's  
10 just going to take me a minute. I need my board again,  
11 of course.

12 THE WITNESS: I like using a board.

13 **CROSS-EXAMINATION**

14 **BY MR. MINNOCK:**

15 Q. You know, I talked with Mr. Mitchell at the  
16 break, and you caught a break, Dr. Hall, that I'm going  
17 to let him talk to you about the numbers because the  
18 concentration numbers and stuff he has a far better  
19 understanding of that, so you won't have to educate me  
20 on that.

21 Okay. When you get an assignment like this  
22 in your profession you generally look at three different  
23 things, and those are the clinical data, the  
24 histological results, and then the feed tests, right?

25 A. Actually, I personally, when I investigate a case

1     like this, I look at a lot more than that.

2           Q.   Well, I know you do, but those are the three  
3     broad characterizations that you look at.  You added  
4     scientific literature and then you look at -- but you  
5     look at a lot of things, right?

6           A.   I look at a lot of things.  I also do interviews  
7     with the parties involved to try to get all the facts  
8     possible.

9           Q.   Now, in this case, all of the data that you have  
10    regarding the symptoms and events that were going on on  
11    those ranches come from the parties themselves, right,  
12    Mr. Jonsson --

13          A.   Yes.

14          Q.   -- and Mr. Griffeth?

15          A.   That is correct.

16          Q.   All right.  But you don't have any data from any  
17    veterinarian.

18          A.   No, sir.

19          Q.   Because no veterinarian was ever called, right?

20          A.   That is my understanding.

21          Q.   And when I -- and if this was you and you were  
22    suffering this kind of loss, you would have counseled  
23    them to call a veterinarian, correct?

24          A.   Had they called me early on that would have been  
25    my recommendation.

1 Q. And had they called you, what you would have done  
2 is you would have examined these mink yourself as an  
3 expert to determine what the symptoms and signs that  
4 they were exhibiting were.

5 A. That is correct.

6 Q. And you would have done necropsies on the  
7 deceased mink to determine whether the disease profile  
8 fit what you were seeing on the farm.

9 A. That is correct.

10 Q. Okay. But none of that occurred.

11 A. That is correct.

12 Q. Now, you talked about what you called a control,  
13 and let's make sure we understand what we mean by a  
14 control. A control means that you have everything  
15 essentially identical, but you change one variable to  
16 determine whether or not it affects the outcome; is that  
17 fair to say?

18 A. That is the most theoretically pure control.

19 Q. Okay. And I understand that's very difficult to  
20 obtain, either scientifically or in the field or  
21 anything, but that's sort of what you're trying to do is  
22 search for commonality and then separate out one  
23 particular variable, right?

24 A. That is correct.

25 Q. Okay. Now, here you said that the control, I

1 take it, would be in your mind the Cedar Valley Ranch,  
2 right?

3 A. That is correct.

4 Q. And the other four would be -- or the other three  
5 that you would be talking about would be Roger Griffeth,  
6 Kent Griffeth, and the Jonssons' Lehi farm, right?

7 A. That is correct.

8 Q. Okay. All of which claim losses against National  
9 Feeds, right?

10 A. Yes.

11 Q. Okay. In your investigation you were given a  
12 copy of the deposition of Scott Harris, right?

13 A. I recognize that name, yes, sir.

14 Q. And Scott Harris also received the lactation  
15 crumlets from the identical batch as the Griffeths and  
16 the Jonssons, right?

17 A. If -- I do not recollect seeing a deposition from  
18 somebody else that received the lactation crumlets.

19 Q. Well, it was Mr. Harris who was in this group.  
20 Do you remember reading his deposition where he said he  
21 suffered no adverse losses in 2010?

22 A. Actually I'm not sure that I read that  
23 deposition, I have to go back and check, because I do  
24 not recollect reading any deposition where somebody said  
25 they did not see any losses.

1 Q. But it would obviously be an important  
2 consideration to take into account whether or not  
3 somebody else who was not a party to this litigation or  
4 to other litigation suffered a similar loss, right?

5 A. That would be important to me, yes.

6 Q. All right. Now, the other thing is when you  
7 talked about your control, there's no documentation that  
8 supports -- that you've been able to see that supports  
9 what they've told you in terms of the fact that the  
10 Cedar Valley farm suffered no losses and Lehi did,  
11 right?

12 A. I'm not saying they didn't suffer any losses.  
13 You always have a small number of losses any time you  
14 have a production environment.

15 Q. Well, I guess I should have stated it to you this  
16 way: You haven't seen any documentation regarding the  
17 production on the Lehi farm versus the Cedar Valley farm  
18 to determine whether or not your control -- the data  
19 meshed with your control.

20 A. That is correct. I took that from the  
21 information that was provided to me.

22 Q. All right. And you understood that on the Lehi  
23 Ranch -- well, you understood that with respect to  
24 mahoganies, okay, that we don't know whether any  
25 particular mahogany owned by the Jonssons ate the



1 lactation crumlets or not, right, because they had half  
2 in Lehi and half in Cedar Valley, right?

3 A. Okay. You lost me in the middle of that  
4 somewhere in the description.

5 Q. Was it your understanding that the Jonssons kept  
6 half their mahoganies in Lehi and half their -- well,  
7 it's actually more than half their mahoganies in Cedar  
8 Valley?

9 A. My understanding was they were split, I didn't  
10 know to what ratio.

11 Q. But you understood they were split.

12 A. Yes.

13 Q. You understood also that they kept all of their  
14 blacks in Lehi.

15 A. I was told that, yes.

16 Q. So if you wanted to determine whether or not  
17 there was -- your control experiment was correct you  
18 would look at the production values on the black mink  
19 because you know that they ate the lactation crumlets,  
20 right?

21 A. Yes.

22 Q. And if the production for black mink actually  
23 rose the year that the Jonssons fed the lactation  
24 crumlets as opposed to falling, that would cause you  
25 some concern about your opinions and about your control.

1       A. I would want to look and make sure numbers were  
2 equal year to year to see whether it truly rose or  
3 whether they had an increased number of females to where  
4 they had a higher number of babies. If it truly did  
5 rise, then, yes, that would concern me.

6       Q. Okay. All right. Well, we've seen this chart,  
7 and I'm not trying to hide it from you, but our jury's  
8 seen it a million times, and we'll deal with that issue  
9 later. I know we're short on time here today.

10           Okay. Now, let's talk about some nitrosamines.  
11 The reason that you pointed to the one nitrosamine  
12 sample that had .22 of the NDMA, which is the -- I can  
13 never pronounce it, but you referenced it, the  
14 dimethylamine, the reason you relied on that as the most  
15 credible is because you oversaw that sampling yourself.

16       A. I actually opened the bag and took the sample  
17 myself.

18       Q. All right. But, nevertheless, you're not able to  
19 extrapolate that level back to when the mink actually  
20 ate the feed.

21       A. I cannot extrapolate it, but with a reasonable  
22 degree of scientific certainty I can say it should be  
23 similar, if not equal, to the concentrations that were  
24 present at the time that they were fed.

25       Q. Let me show your deposition because I asked you

1     that question in your deposition. Let me hand you that.  
2     If you'll turn to page 52, line 22, to 53, line 6, and I  
3     think I asked you the question. Okay. All right. Have  
4     you done any -- made any determination as to what the  
5     rates of these nitrosamines would be back when it was  
6     being fed in March, April, May of 2010, some, what is  
7     that, 18 months earlier than when you did your  
8     sub-sample?

9                 Without having data from that exact time  
10     point you can't make an extrapolation.

11                My question was, If you can't make an  
12     extrapolation, could that be as low as zero at that  
13     point?

14                And you said, It's possible.

15     A. It is possible.

16     Q. Okay. All right. Now, let's talk a little bit  
17     about dose, because you talked about that term with  
18     Mr. Hancey, dose versus concentration. The testing  
19     results that you went through with Mr. Hancey are the  
20     concentrations in the feed, right?

21     A. That is correct.

22     Q. Okay. So that would be similar to me if I pick  
23     up a bottle of Tylenol and it says 500 milligrams.

24     A. That is correct.

25     Q. Each one of those pills has 500 milligrams.

1           A.    That is correct.

2           Q.    Okay.  What's the difference between that and  
3   dose?

4           A.    A dose is taking the concentration in a feed, for  
5   example, multiplying it by the amount of feed that was  
6   ingested, and then dividing it by the body weight of the  
7   animal to get an actual number of milligrams per  
8   kilogram of an individual compound that was ingested on  
9   a daily, weekly, monthly, or lifetime basis.

10          Q.    And that's how you take into account the fact  
11   that I can take 500 milligrams of Tylenol but my 7 year  
12   old can't take 500 milligrams of Tylenol.

13          A.    That is correct.

14          Q.    Because even though it's the same concentration,  
15   it would be more harmful to him because of his smaller  
16   body weight, right?

17          A.    Extremely higher dose.

18          Q.    Extremely higher dose because of his smaller body  
19   weight.

20          A.    Correct.

21          Q.    Okay.  What I want to understand is what do you  
22   believe could be the dose of NDMA per day per mink given  
23   the .22.

24          A.    When you calculate the dilution ratios on a  
25   dry-weight basis, you are looking at approximately

1 0.1. Not 0.01. You've got your point in the wrong  
2 place.

3 Q. Oh, 0.1?

4 A. Milligrams per kilogram of feed.

5 Q. Now, that's our concentration.

6 A. Right.

7 Q. Okay. What's our dose?

8 A. Okay. If you have a 1 kilogram mink and they're  
9 eating 10 percent of their body weight, then you have --  
10 so --

11 Q. Hans, where is your calculator?

12 A. You end up with an exposure of 0.01 milligram per  
13 kilogram per day.

14 Q. 0.01.

15 A. Right.

16 Q. Milligram per kilogram of body weight, BW.

17 A. Per day.

18 Q. Per day. Per day. Okay. And then if you want  
19 the total exposure you times this by the number of days  
20 that they consume the feed.

21 A. That's correct.

22 Q. All right. Do you take into factor any  
23 elimination?

24 A. Actually what you're doing there is you're  
25 calculating total exposure, and total exposure may or

1 may not have any validity on whether they have a toxic  
2 reaction or not. It may be the individual time point of  
3 exposure.

4 Q. All right. Now, let's talk then about the  
5 histamines. What did you -- what is your calculation of  
6 the dose of histamines that you believe these mink  
7 ingested?

8 A. I did not calculate dose of histamines. On the  
9 studies within NDMA, the studies that I was comparing to  
10 was comparing against dose. So the studies with the  
11 histamine I was comparing to studies that were based on  
12 concentration in the feed.

13 Q. So we don't have a dose on histamines.

14 A. I did not calculate a dose on histamines, no,  
15 sir.

16 Q. Now, you went through with Mr. Hancey some  
17 discussion about the -- let me move this out of the way  
18 so we can see each other. I apologize. You went  
19 through with Mr. Hancey the fact that there was a  
20 variability in the histamine testing over time, right?

21 A. That is correct.

22 Q. Okay. And you posited that one potential cause  
23 of that may be either incomplete or uneven mixing of the  
24 feed.

25 A. That is correct.

1 Q. Okay. Another possibility could be that the test  
2 samples were not done properly.

3 A. That's a possibility as well.

4 Q. And, in fact, the first test that was ever done  
5 for histamines did you ever see that test, Exhibit  
6 Number 40, if you want to look in that book at Exhibit  
7 Number 40?

8 A. I've actually seen pages and pages and pages  
9 worth of testing, so let me look to make sure I've seen  
10 this specific one. You said Exhibit 40, sir?

11 Q. Yes, Exhibit 40. It's the first test that was  
12 done in December of 2010, and it indicated that  
13 histamines were in fact not detected, right?

14 A. That is what the report says, yes, sir.

15 Q. All right. And that was the only test that was  
16 done prior to litigation being filed in this case.

17 A. I'll take your word for that. Like I say, I've  
18 looked a lot of tests with a lot of dates on them.

19 Q. With the nitrosamines you sent out a test of your  
20 own to make sure that it would be accurate, but you did  
21 not do a similar thing with respect to the histamines.

22 A. That is correct.

23 Q. Okay. You said -- you were asked a question by  
24 Mr. Hancey, and this is my final question, then I'll let  
25 Mr. Mitchell ask you some questions, that when you

1 talked about the potential future a year from then that  
2 in mink that had been given long-term doses of  
3 nitrosamines that they in fact had developed tumors in  
4 some of these studies.

5 A. That is correct.

6 Q. Okay. Those were over a period of almost  
7 500 days. The one study you were talking about, which I  
8 think is the Koppang article, they were exposed to a  
9 dose for 500 days before they developed --

10 A. Some animals were, some animals developed tumors  
11 prior to that time point.

12 Q. Here we're talking about a period of about  
13 40 days, right?

14 A. That's correct.

15 Q. None of the data that you've seen from any  
16 necropsies show any tumors.

17 A. I have not seen any necropsy data with tumor  
18 information on it, no, sir.

19 Q. Okay. So at this point you cannot say that there  
20 were any losses in 2011 or beyond that would be  
21 attributable to the ingestion of the lactation crumlets.

22 A. All I said was that it was possible.

23 Q. Right. But you're not willing to say that that  
24 is probable to a degree of scientific certainty.

25 A. I have not seen any data to support it, no, sir.



1 MR. MINNOCK: All right. Thank you very  
2 much.

3 CROSS-EXAMINATION

4 BY MR. MITCHELL:

5 Q. Dr. Hall, you haven't done anything to actually  
6 confirm that the Jonssons suffered an increased neonatal  
7 mortality rate in 2010, did you?

8 A. I took that information directly from them. I  
9 did not go visit the farm, no, sir.

10 Q. Didn't go visit the farm, you didn't look at any  
11 of their production records, anything like that that you  
12 could use to verify whether they actually suffered an  
13 increased death rate.

14 A. I did not do an economic analysis in this  
15 situation, no, sir.

16 Q. Okay. I think you've also mentioned really a  
17 number of things that are associated with both  
18 nitrosamines and histamines. For example, you've  
19 mentioned at the acutely high doses you can see liver  
20 failure and jaundice of the eyes, things like that, and  
21 we haven't seen any of that in this case, correct?

22 A. And I wouldn't. No, sir, we haven't.

23 Q. Okay. And now have we seen anything that falls  
24 into the lower range of exposure that you discussed, for  
25 example, a reluctance to eat food?

1       A.    The concentrations that were determined were not  
2    concentrations that previously had been reported to  
3    cause them to back away from feed.

4       Q.    So you wouldn't have associated any backing away  
5    from feed with levels of nitrosamines that may or may  
6    not have been present in the feed in 2010.

7       A.    If these were nonpregnant mink I could make that  
8    statement based on the science that's been done to date,  
9    but since those studies have not been done adequately in  
10   mink that are pregnant, I cannot say one way or the  
11   other.

12      Q.    Okay.

13               THE COURT:   You might pull that mic a little  
14   towards you to make sure everybody hears you.

15               THE WITNESS:   I'm sorry.

16      Q.    (By Mr. Mitchell) Were you provided with the feed  
17   data from the Jonssons for -- say, for example, the year  
18   2010?

19      A.    What do you mean by the feed data?

20      Q.    Well, you understand that they received periodic  
21   deliveries of feed from the Fur Breeders Ag Co-op,  
22   correct?

23      A.    That is correct.

24      Q.    Now, did they share with you the quantities of  
25   feed that they had delivered and fed their mink in the

1 time period say April, May, and June of 2010?

2 A. I do not remember seeing delivery records.

3 Q. Okay. And so you wouldn't have seen delivery  
4 records then for 2009 either, correct?

5 A. I do not believe so, sir.

6 Q. So at that point, you wouldn't be aware, for  
7 example, that they actually consumed more feed during  
8 that period in 2010 than they did in 2009.

9 A. I do not have that data, no, sir.

10 Q. Okay. Let's see, you've already talked about  
11 tumors, so I won't touch on that.

12 Were you provided with any data about birth  
13 weights for the kits?

14 A. My understanding was they tried to leave the kits  
15 alone when they were born because you most times don't  
16 want to disturb very young neonates because sometimes  
17 that can cause the mothers to abandon them.

18 Q. So your answer is no.

19 A. The answer is no.

20 Q. Okay. You mentioned in moderate doses that we  
21 can see liver damage and fibrosis in the liver as well,  
22 and we haven't seen any necropsies with liver damage or  
23 fibrosis, correct?

24 A. Correct.

25 Q. Okay. Now, in histamines, there seems to be some

1 overlap in potential signs that one could see with  
2 nitrosamines and then some that didn't necessarily  
3 overlap. You mentioned the potential for a decreased  
4 food intake, and we've already gone over the fact that  
5 you weren't given any data on food intake.

6 Vomiting, you mentioned that there's the  
7 potential for vomiting. And you received Keith  
8 Jonsson's deposition and Michael Jonsson's deposition,  
9 correct?

10 A. That's correct.

11 Q. And you've looked at both of those depositions?

12 A. Yes, sir.

13 Q. That was part of your investigation?

14 A. Yes, sir.

15 Q. And you're aware that they've testified that they  
16 didn't see any vomiting?

17 A. Yes, sir.

18 Q. And the same is true for diarrhea.

19 A. That is true.

20 Q. Okay. Now, another symptom that you are -- it's  
21 really more of a sign that you mentioned is possible to  
22 see in a histamine poisoning setting is a swollen  
23 stomach, they can get bloated. Distended stomachs.

24 A. They can get distended stomachs. It never has  
25 been truly described as a bloat, it's just the stomach

1 is enlarged when the animals were killed and the  
2 stomachs taken out.

3 Q. Okay.

4 A. It was not described as a bloat.

5 Q. An enlarged stomach or a distended stomach is the  
6 way you would describe it.

7 A. Yes.

8 Q. So we haven't seen any necropsies with either  
9 enlarged or distended stomachs.

10 A. To my understanding there was no necropsies done  
11 for an extended period of time after the feed was  
12 stopped. But, no, I have not seen any necropsies with  
13 those results.

14 Q. And since you looked at Keith Jonsson's  
15 deposition you're also aware of the fact that when Keith  
16 Jonsson cut open some of the mink on his ranch that he  
17 didn't see any distended stomach either.

18 A. That was not described, that's correct.

19 Q. Right. He --

20 A. I don't remember that that question was ever  
21 asked specifically did he see that, but I -- that was  
22 not something he described.

23 Q. Okay. So let's take a look then at some numbers.  
24 Now, how much -- what is your going rate as an expert in  
25 this case?

1 A. My charge is \$200 an hour.

2 Q. Okay. Before we get going on that, you went  
3 through a fairly impressive recitation of the things  
4 that you've done throughout your career. In looking at  
5 your CV and then listening to your recitation, I didn't  
6 hear where you've, for example, actually engaged any  
7 research projects with regard to nitrosamines outside of  
8 this case.

9 A. Not with respect to nitrosamines, but with in  
10 respect to cancer compounds, yes, I have.

11 Q. Okay. But nothing to do with nitrosamines  
12 outside this case.

13 A. That's correct.

14 Q. So that would be true that you haven't published  
15 any papers with regard to nitrosamines.

16 A. That is correct.

17 Q. Okay. And the same is true for histamines as  
18 well, correct?

19 A. That is correct.

20 Q. No papers and no research outside this case.

21 A. Correct, sir.

22 Q. Okay. Now, you did mention when you got going  
23 that it's important to look at the facts that are  
24 presented to you. Now, somebody who's going through and  
25 doing an investigation to reach some conclusions you

1 want to take a look at all of those facts and you want  
2 to have all of those facts presented to you so you can  
3 incorporate all of them into your analysis and come to a  
4 sound conclusion, correct?

5 A. That is correct.

6 Q. Okay. So you've talked about how you've gone  
7 about and done some calculations, and you mentioned that  
8 you -- the Jonssons told you that they tried to get an  
9 incorporation rate, I think you said, of 20 percent.

10 A. 20 to 25 percent.

11 Q. 20 to 25 percent. So now you've had Keith  
12 Jonsson's deposition, like we've talked about, and so  
13 you would have gone through then and looked at the way  
14 that they actually incorporated the feed, the lactation  
15 crumlets into the wet feed, to make sure that they  
16 actually reached a 20 percent inclusion rate, didn't  
17 you?

18 A. I remember reading those documents. I did not  
19 sit down and do the calculations at that point. I had  
20 already been told that they were including it at  
21 approximately 20 to 25 percent.

22 Q. Okay. So let's go through and do those  
23 calculations then. As you've -- you've sent out a  
24 revised report, or a supplemental report, late November  
25 of last year. I think you've kind of referenced it

1 where you received some additional information  
2 concerning the moisture levels in the co-op feed and so  
3 you kind of incorporated that into your analysis and you  
4 went through and issued this initial report -- or, I'm  
5 sorry, this supplemental report. And so if we look at  
6 what the Jonssons actually did, how they describe the  
7 process of mixing the feed, you understand, don't you,  
8 that they were mixing up about 750-pound batches of feed  
9 at a time?

10 A. In that general neighborhood. I think at one  
11 time they described to me as mixing up between 650 and  
12 700 pounds, at one time they said something close to 700  
13 pounds, so in that general vicinity.

14 Q. Let's assume that they've testified before you  
15 and that they've testified that it's been between  
16 somewhere around 750 to 760 pounds for each batch of  
17 feed that they mix up, okay?

18 A. Okay.

19 Q. Okay. So for a little bit easier number say,  
20 we'll deal with a 750-pound batch. Now, is it your  
21 understanding then that for each 750-pound batch they go  
22 through and add in 100 pounds of lactation crumlets?

23 A. That was my understanding.

24 Q. Okay. So out of this 750-pound batch we've got  
25 100 pounds of lactation crumlets, and if we do the math



1 that -- and I'm happy to give you a calculator because I  
2 don't want you to take my word for it, but it ends up  
3 being about 13.3 percent.

4 A. Of total weight, not of dry matter intake.

5 Q. We haven't moved on to dry matter yet. I'm  
6 starting where you started. I'm starting where you  
7 started in your report. You assumed a 20 percent or  
8 25 percent inclusion weight by -- inclusion rate by  
9 weight, correct?

10 A. Right.

11 Q. Okay. So if we assume 100 pounds in a 750-pound  
12 batch it works out to about 13.3 percent.

13 A. Actually when I did it originally, my  
14 understanding was there was over 100 pounds of water  
15 added to that. I did not account for that water because  
16 the water was to be taken out, and so my original  
17 calculations did not include any of that water either.  
18 The numbers are not the 650 pounds, no.

19 Q. The 750 pounds is the total batch, which includes  
20 wet feed, water, and lactation crumlets.

21 A. And I did not include the 100 pounds of  
22 additional water that they added, which is something  
23 that I had been told.

24 Q. Let's make sure we're on the same page.  
25 750 pounds total mixed ration.

1 A. Total mixed ration, yes, sir.

2 Q. Which includes wet feed from the co-op.

3 A. Okay. When I was originally described this it  
4 was not described to me as wet feed. It was described  
5 as co-op feed. So I assumed it was a dry feed, the same  
6 as the lactation crumlets. So I ignored the 100 pounds  
7 of water and only included the co-op portion, the feed,  
8 thought to be a dry-weight feed, and the crumlet feed  
9 when I did my original calculations.

10 Q. I understand. But what we're talking about here  
11 is 100 pounds out of a 750-pound batch, 13 percent and  
12 change, okay? That's just the starting inclusion rate  
13 for the lactation crumlets for purposes of the  
14 calculations that we're going to do, okay?

15 A. Okay. We'll go with your math.

16 Q. Okay. Well, it's your math as well. We've -- we  
17 can mark in your report, but that's the starting point.

18 A. If you include the -- and like I say, in my  
19 original math and in my original description I did not  
20 include that 100 pounds of water, which means I was  
21 looking at a 650-pound batch.

22 Q. Sure.

23 A. Not 750.

24 Q. Okay. All right. So this is where we're at.

25 Okay. Now, out of the 100 pounds in there of lactation

1     crumlets, let's just assume that we have the  
2     concentration of NDMA of .22 milligrams per kilogram  
3     parts per million.

4     A.    Right.

5     Q.    Okay? That means that we also had .1 kilograms  
6     per pound of the lactation crumlets, correct?

7     A.    That is correct.

8     Q.    Because we've got 2.2 pounds --

9     A.    2.205 pounds per kilogram.

10    Q.    Per kilogram. Divide that into -- divide that by  
11    the -- when you do the math it ends up being .1.

12    A.    That is correct.

13    Q.    Okay. Now, that would mean then that the mixed  
14    ration at 750 pounds is going to have 10 milligrams  
15    total of NDMA.

16    A.    That is correct.

17    Q.    Okay. Now, if we look at what that pencils out  
18    to be, we're going to divide for just one batch of feed,  
19    we're going to divide 10 milligrams by the 750.

20    A.    And that would give you milligrams per pound, not  
21    milligrams per kilogram.

22    Q.    Correct. So let's do that math, if you would  
23    please.

24    A.    0.0133333 milligrams per pound.

25    Q.    0.01 --

1       A.    -- 333333.

2       Q.    Okay.  Shall we round it off to 0.013?

3       A.    That will work.

4       Q.    Okay.  0.013 milligrams per pound of mixed  
5   ration.

6       A.    That is correct.

7       Q.    Are you with me so far?

8       A.    Yep.

9       Q.    Mink don't generally eat a pound of feed per day,  
10   do they?

11       A.    A mink will eat, depending upon the water  
12   content, will eat somewhere between 8 percent and about  
13   15 percent of their body weight per day in the material  
14   fed to them, but it depends upon the water content.  And  
15   the higher the water content the larger amount that they  
16   eat per day.

17       Q.    Sure.  On average, though, we're looking at a  
18   mink that's going to eat somewhere around about a third  
19   of a pound of feed per day, if you do it just on  
20   average.

21       A.    That would be close.

22       Q.    Okay.  So let's do the math then.  And in order  
23   to figure out what the daily exposure rate is in the  
24   feed as fed to these mink we're going to divide this by  
25   3, a third of a pound, because we've got .013 milligrams

1 per pound, if they eat a third of a pound, we're going  
2 to divide this by 3. So let's go ahead and do that and  
3 see what that comes up to be.

4 A. 0.004.

5 Q. 0.004 milligrams per pound.

6 A. Actually, that's 0.004 milligrams.

7 Q. You're right. The daily exposure rate for the  
8 mink in this case, assuming the level of .22 NDMA in the  
9 mixed ration in the lactation crumlets, was 0.004  
10 milligrams per day, correct?

11 A. Assuming a third of a pound of ingestion per day.

12 Q. Okay.

13 A. That's the reason I like doing it on a dry-weight  
14 basis because you remove the water factor and you can  
15 get more accurate with the intake.

16 Q. Sure. But we're looking at the ration as mixed  
17 and fed to the plaintiffs' animals, and this, assuming  
18 the .22 level in the lactation crumlets, is what their  
19 exposure rate was, and that's the important factor from  
20 a toxicological standpoint, correct?

21 A. Actually, no, sir. You're still accounting --  
22 you cannot be as accurate with intake if you include the  
23 water. You would be more accurate doing it on a  
24 dry-matter basis because dry matter intake is more  
25 constant. A wet feed material intake is more variable

1 depending upon the moisture content, and so you can't be  
2 as precise with your daily exposure rates.

3 Q. But we're going to have dry matter vary with the  
4 water. The more water you have, the less dry matter you  
5 have and vice-versa.

6 A. And the more water you have the more they eat per  
7 day to make up for the fact that it's diluted.

8 Q. Sure.

9 A. And so --

10 Q. But the problem is --

11 THE COURT: Don't overlap. Put your  
12 question, let him respond. Put your next question.

13 Q. (By Mr. Mitchell) I didn't mean to cut you off.  
14 I apologize.

15 A. What I was trying to explain is as you increase  
16 the amount of water, you increase the total amount of  
17 ingestion and decrease the amount of water standalone  
18 that the animals are going to drink on a daily basis.  
19 So you change exposure amounts. That's the reason doing  
20 it on a dry-matter basis is much more scientifically  
21 accurate.

22 Q. Okay. So then if we look at this from a  
23 dry-matter standpoint -- let's come back to the dry  
24 matter and let's look at histamines.

25 Oh, also the -- I think the Koppang study is

1 one of the studies that you relied upon in forming your  
2 opinions. Are you familiar with when I say the Koppang  
3 study what we're talking about?

4 A. I believe Koppang had a couple of different  
5 studies.

6 Q. I'm specifically talking about the study of toxic  
7 and carcinogenic effects of nitrosodimethylamine in  
8 mink.

9 A. Yes, sir.

10 Q. So when we look at the Koppang study does it give  
11 any indication in there of the dry matter concentration?  
12 I'm happy to present you with the article.

13 A. I would love to see it. Actually, they do not  
14 describe dry matter content in their dosings, no, sir.

15 Q. Okay. The doses that they do describe, though,  
16 concentrations in the feed they had actually four  
17 different concentration levels, 2.4 milligrams per  
18 kilogram of NDMA, 3.5 milligrams per kilogram of NDMA,  
19 and 2.2 milligrams per kilogram of NDMA, and the fourth  
20 one was 7.2 milligrams per kilogram of NDMA. Is that  
21 your understanding of the concentrations in the feed?

22 A. Actually if I could see the study again. I'm not  
23 sure whether that's the concentrations in the final feed  
24 or whether that's the concentrations in the fish meal  
25 that they used to make the feed that was then further

1 diluted.

2 Q. I think you are correct, I think you are correct,  
3 it is milligrams per kilogram of the fish meal.

4 A. Actually that's in the fish meal, which is only a  
5 small percentage of the total diet.

6 Q. Okay. And then it got diluted down.

7 A. Where they were actually feeding 0.04 to 0.07, I  
8 believe, in most of the groups.

9 Q. That was what was being consumed on a daily basis  
10 by those mink, correct?

11 A. Correct.

12 Q. And for those mink that were consuming 0.04 all  
13 the way up to 0.08, they had no pathoanatomical changes  
14 at the end of the study, correct?

15 A. That was not my understanding from the study, no,  
16 sir.

17 Q. Okay. So let me show you the study again. Just  
18 talking about the animals that consumed at the rate of  
19 0.04 all the way up to 0.08.

20 A. Okay. Yes, sir, that is correct, and as  
21 extremely low exposures.

22 Q. Okay. How long did that study last?

23 A. There were differing time points in that study.  
24 I mean that particular research project there were some  
25 animals that were fed shorter periods of time, there



1 were some animals that were fed an extremely long period  
2 of time. And without having the article sitting right  
3 here at my hands to where I can make sure we're  
4 comparing apples and apples, those specific three dosing  
5 groups, or four dosing groups, I need to see the study  
6 to be able to tell you exactly how many days they were  
7 dosed.

8 Q. So if we look at this study right here, so we're  
9 looking at the portion that's embodied in table 2, it  
10 looks to me like they were fed 122 days at those rates.  
11 Is that how you read that able?

12 A. That is correct.

13 Q. So for the three groups that were fed for 122  
14 days levels from .04 to .08 milligrams per kilogram of  
15 body weight per day of NDMA we had no changes in their  
16 system.

17 A. There was no pathologic lesions described,  
18 correct.

19 Q. Okay. And it's only when we get up to the lowest  
20 level where we find changes being a .13.

21 A. That is correct.

22 Q. Within that study. Okay.

23 A. Your original question was how long were they  
24 fed, that was a 122-day study.

25 Q. Correct. So all of those were fed for 122 days.

1 How many days were the mink in this case exposed to  
2 NDMA?

3 A. Less than 60 days was my understanding.

4 Q. If we count, let's assume, April 25th to  
5 June 7th, by my count that's 44 days.

6 A. 44, 45 days, yeah.

7 Q. So roughly a third of the time that the mink in  
8 the Koppang study were exposed.

9 A. That's correct.

10 Q. Okay. This is the description of how the  
11 plaintiffs prepared their mixture every day once they  
12 got it fully incorporated. Have you done anything to  
13 look at what their actual incorporation rate was, what  
14 it averaged over the entire time that they fed the  
15 lactation crumlets to their mink?

16 A. The answer to my question is the same as I  
17 answered earlier, I was not provided information on  
18 their delivery load, so there was no way for me to  
19 calculate from that data. The inclusion rate was  
20 calculated based on information provided to me by the  
21 Jonssons.

22 Q. Okay. And so that answers that question.

23 Now, when we look at the concentrations of  
24 histamines, have you been able to -- let me back up a  
25 minute. Is it correct, or am I correct in my

1 understanding that histamines are formed by the  
2 conversion of histidine through a bacterial process?

3 A. It's usually through a bacterial process, yes,  
4 sir.

5 Q. Now, have you done -- and that's normally why you  
6 would expect to see histamine levels fall off over time  
7 because that bacteria that would normally convert the  
8 histidine gets cooked out when you make fish meal.

9 A. That is true to some degree, but there are  
10 studies showing that the histamine concentrations  
11 decrease across time even in significantly contaminated  
12 samples.

13 Q. Right. And so have you done anything to look at  
14 the sampling techniques that were employed by the  
15 Griffeths in this case to rule out the potential for  
16 cross-contamination and the reintroduction of the  
17 bacteria that would lead to the creation of additional  
18 histamine levels over time?

19 A. I have not looked at that, no, sir. I was not  
20 there when they sampled it, and so there's no way I can  
21 control for that.

22 Q. Okay. You are unable to tell us with any  
23 certainty what the level of histamines would have been  
24 in the lactation crumlets at the time that it was fed to  
25 the Jonssons' mink, correct?

1           A. I am not able to say with certainty. I can say  
2           that the concentrations were, within a reasonable degree  
3           of scientific certainty, higher than various  
4           concentrations that were identified during the analyses.

5           Q. So let's take a look at your deposition page  
6           110 --

7                     THE COURT: Are you about through with him?

8                     MR. MITCHELL: I can be. I mean I could  
9           be -- I've got a little bit more I think, but this is a  
10          good stopping place.

11                    THE COURT: Let's see if you can finish him.  
12          Let's finish.

13                    MR. MITCHELL: Okay.

14                    THE WITNESS: You said page 110, sir?

15          Q. (By Mr. Mitchell) Page 110. Page 110, starting  
16          on line 10. Okay. And so are you able to tell us with  
17          any certainty what the level of histamines would have  
18          been in the feed at the time it was fed to the Jonssons  
19          mink?

20                    Answer, No, sir.

21                    Did I read that correctly?

22          A. With certainty I cannot.

23          Q. Did I read the deposition correctly?

24          A. Yes, you read the deposition correctly.

25          Q. Okay. Thank you.

1                   Now, when you calculated the histamine  
2 concentrations in the studies that you looked at in the  
3 histamines -- for histamines are those studies done on  
4 an as fed or on a dry-matter basis?

5           A.   Actually when I went back and looked at those,  
6 those studies were done on an as-fed basis, so they did  
7 not need to be converted to a dry weight.

8           Q.   So let's do the math again.  So which study did  
9 you look at and rely upon principally for reaching your  
10 conclusion with regard to the histamine levels present  
11 in the lactation crumlets?

12          A.   I don't remember the author's name.  It was the  
13 one that I provided to you.

14          Q.   No.  I mean when I say study, I mean the analysis  
15 that was done in this case.

16          A.   What I like to do is I like to look at all  
17 possibilities, but then you always want to calculate  
18 worst case scenario.

19          Q.   So we can run the gamut.  We have the very first  
20 test that was done that didn't detect any.  If you don't  
21 detect any, there's nothing there to go from.

22          A.   Right.

23          Q.   So let's look then at the worst case scenario,  
24 what's the worst case scenario?

25          A.   That was a concentration that determined to be

1 400 and --

2 Q. I believe it was 442?

3 A. Yes, sir.

4 Q. So for every, let's assume worst case scenario,  
5 every 750-pound batch of feed has 100 pounds of  
6 lactation crumlets with 442 parts per million of  
7 histamines in it.

8 A. That's correct.

9 Q. Okay. It's my understanding that if we take --  
10 it's going to dilute this number down by the same  
11 percentage that we're looking at here. So I didn't  
12 answer that -- walk me through -- I didn't ask that  
13 question very well. It's the end of the day. Walk me  
14 through the math then to figure out what the  
15 concentration level is assuming -- in the mixed ration  
16 assuming the 442 million -- parts per million level.

17 A. Okay. The easiest way to do it is to take 100  
18 and divide it by 750.

19 Q. And that's going to give us 13 -- roughly  
20 13.3 percent I believe.

21 A. Then multiply that by the 442.

22 Q. So if we go 442 -- in fact do you still have --  
23 nope. Let's be precise, figure out exactly what the  
24 percentage is first. What does 100 divided by 750 work  
25 out to be?

1 A. 0.1 -- 0.1333.

2 Q. Okay. So we were -- I was right, so  
3 13.3 percent. So then let's multiply that by that.

4 A. Is 58.933.

5 Q. 58.933 parts per million worst case scenario,  
6 assuming a 750-pound batch of feed.

7 A. As fed.

8 Q. As fed.

9 A. Correct.

10 Q. So just a whisker above the level that your  
11 studies -- that the studies that you reviewed looked at  
12 found might cause some harm to mink.

13 A. There again those were in nonpregnant mink, and  
14 we don't know the relative sensitivity of pregnant mink  
15 as a comparison.

16 Q. Right, we don't know.

17 A. Right.

18 Q. Could be the same, could be more, we don't know.

19 A. Correct.

20 Q. The studies you've looked at 50 parts per million  
21 is where you start seeing effects in the mink?

22 A. That is correct.

23 Q. Okay. We're just a whisker above that, worst  
24 case scenario, in the total mixed ration. And what are  
25 the kinds of signs that you would expect to see at that

1 low level?

2 A. You wouldn't necessarily see the vomiting and  
3 diarrhea. You would see a slight decrease in feed  
4 intake, a decrease in weight gain, a decrease in growth  
5 rate.

6 Q. Have you seen any evidence of decreased weight  
7 gain in these mink?

8 A. The animals weren't weighed, so there's no  
9 documentation.

10 Q. What was the other one that you mentioned?

11 A. Decreased feed intake.

12 Q. Decreased feed intake. We've talked about --

13 A. That was not measured as well.

14 Q. And then there was a third one I think.

15 A. Decreased feed intake, decreased rate of gain,  
16 and decreased growth rate. And where you're talking  
17 adult animals, they're already grown, and so that  
18 becomes a nonvariable.

19 Q. Is there a difference between growth rate and  
20 rate of gain?

21 A. Not really.

22 Q. Okay. All right.

23 From the studies that you have seen, from  
24 the studies that are out there, would you expect to see  
25 any deaths resulting from histamines at that level?



1           A.   Not with histamines by themselves, no.

2           Q.   All right.

3                   MR. MITCHELL:   I believe those are all the  
4   questions I have for you right now.   Thank you,  
5   Dr. Hall.

6                   MR. HANCEY:   Your Honor, I've got redirect.  
7   It's 5:05.   Should I start on that?

8                   THE COURT:   Well, give me your estimate, how  
9   long?

10                  MR. HANCEY:   It could be as much as a half  
11   an hour, Your Honor.

12                  THE COURT:   9:30 tomorrow, ladies and  
13   gentlemen, come in at 20 minutes after 9:00, and we'll  
14   get started right at 9:30.   Remember what I told you,  
15   don't talk to anybody about the case.   I appreciate your  
16   help.   You may be excused.

17                   (Whereupon, the following proceedings were  
18                   held in open court outside the presence of  
19                   the jury.)

20                  THE COURT:   After this witness, who else  
21   have we got?

22                  MR. HANCEY:   Well, Your Honor, we've got two  
23   representatives of Rangen, who I understand will be  
24   available tomorrow, they will be very short witnesses.  
25   We have two National representatives we wanted to take

1 tomorrow, but we've been informed they're not going to  
2 be available until later on.

3 THE COURT: Tomorrow's the time. Why aren't  
4 they here tomorrow?

5 MR. MINNOCK: Your Honor, there is another  
6 case dealing with feed going on in the Federal District  
7 Court of Wisconsin in the Eastern District, those two  
8 are there tomorrow to start that trial, and then they  
9 will end -- one of them is the witness we talked about  
10 that is going to be here next Tuesday, but the other one  
11 will be here Thursday morning.

12 MR. HANCEY: And our last witness is going  
13 to be the economist, Dr. Roberts. If all goes as  
14 planned, we'll probably run out of witnesses tomorrow.

15 THE COURT: Well, we won't run out of  
16 witnesses. You get your witnesses here. We're going to  
17 plow ahead. That's what we planned for.

18 MR. HANCEY: Well, Your Honor, what I mean  
19 is we'll have accounted for all of the witnesses except  
20 for the National Feeds representatives that are --

21 THE COURT: Are you bringing them in as a  
22 part of your defense?

23 MR. MINNOCK: Yes.

24 THE COURT: And when are you going to have  
25 them here as part of your defense if they finish up

1 tomorrow?

2 MR. MINNOCK: Well, assuming that the  
3 Wisconsin one goes as scheduled, then Ed Buschur will be  
4 here first thing Thursday morning and then Dre Sanders  
5 will be here first thing Tuesday. We do anticipate  
6 calling witnesses in the interim, this is something we  
7 had talked about, so we will have witnesses ready  
8 Thursday.

9 THE COURT: Well, let's plow ahead, do the  
10 best we can.

11 MR. HANCEY: Very good, Your Honor.

12 THE COURT: As a matter of curiosity, is it  
13 the same kind of case in Wisconsin?

14 MR. MINNOCK: It deals with a different  
15 issue dealing with some feed that came out of a company  
16 called United Pet Food in Indiana, but it was under the  
17 name of National Feeds and so it deals with --

18 THE COURT: A different product?

19 MR. MINNOCK: Yes, it's a different product.  
20 It's 100 percent diet thing, different product,  
21 different manufacturer, and it's back in Wisconsin.

22 THE COURT: Okay.

23 MR. MINNOCK: Oh, I'm sorry, Your Honor, I  
24 just got a text from these two witnesses, they just  
25 texted me that that case has settled, so we'll keep you

1 up-to-date. We'll get them here as fast as we can.

2 THE COURT: You'll have them here?

3 MR. MINNOCK: I hope.

4 THE COURT: I hope so too.

5 (Whereupon, the matter was continued to  
6 Wednesday, January 15, 2014, at 9:30 a.m.)

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C E R T I F I C A T E

State of Utah

County of Salt Lake

I, Karen Murakami, a Certified Shorthand Reporter for the State of Utah, do hereby certify that the foregoing transcript of proceedings was taken before me at the time and place set forth herein and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of February, 2014.

Karen Murakami

Karen Murakami, CSR, RPR